July 28, 2023

**VIA EMAIL ONLY (courtlandtownship@gmail.com)**

Re: Town of Courtland Solar Ordinance

Dear Clerk Eisenga:

We write the Town of Courtland as advocates for clean, responsible, renewable energy in Wisconsin. We are aware that solar development is moving forward in Columbia County and the Town of Courtland, and we support its growth as financially and environmentally beneficial to local communities, Columbia County, and the State of Wisconsin as a whole.

We have reviewed the Solar Energy System Licensing Ordinance ("Courtland Solar Ordinance") enacted by the Town of Courtland on Wednesday, June 21, 2023. We have also reviewed the attached legal analysis of the same provided by the Michael, Best, and Friedrich law firm, and consistent with that analysis, we conclude that the Courtland Solar Ordinance is plainly in violation of Wisconsin law. You may share this analysis with members of the Town of Courtland Board or others who have an interest in this matter. In providing this conclusion and analysis, we do not waive any attorney-client or other privilege to which we may be entitled and reserve all legal rights in regard to any potential next steps regarding the Courtland Solar Ordinance.

We urge the Town of Courtland to repeal the Courtland Solar Ordinance as soon as practicable. The ordinance has no impact on projects approved by the Public Service Commission of Wisconsin and its legal infirmities are likely to lead to needless litigation. We note that our position is consistent with the analysis in a widely shared April 13, 2023, memorandum by Columbia County's Corporation Counsel regarding a solar moratorium proposed by Columbia County. *See* Columbia County Corporation Counsel Memorandum at 1-6 (attached).

Sincerely,

| Clean Grid Alliance | RENEW Wisconsin | Samsung C&T Renewables, LLC |
|---|---|---|
| */s/ Peder Mewis* | */s/ Sam Dunaiski* | */s/ Hanjoo Jun* |
| Peder Mewis<br>Regional Policy Director | Sam Dunaiski<br>Executive Director | Hanjoo Jun<br>Director |

cc: Stan Riffle, Esq.

Attachments

# Memorandum

**To:** Town of Courtland, Wisconsin

**From:** Michael Best & Friedrich LLP

**Date:** July 28, 2023

**Subject:** Town of Courtland Solar Energy System Licensing Ordinance

---

## Introduction

On June 21, 2023, the Town of Courtland, Wisconsin ("Town") passed a Solar Energy System Licensing Ordinance ("Solar Ordinance"), provided as Attachment A. This memorandum explains that the Solar Ordinance is in violation of state law.

The Solar Ordinance requires a permit from the Town before an applicant constructs a solar electric generation facility, including ground mounted solar and ancillary equipment covering more than 1000 square feet ("Large Solar Energy System"). *See* Attachment A at 3, 21. The Solar Ordinance places extensive and uniform restrictions on Large Solar Energy Systems sited in the Town. *Id.* at 7-8, 10-17. For example, the Solar Ordinance requires inverters and other "sound-producing equipment" be setback at least 500 feet from adjacent property lines. *Id.* at 8. The Solar Ordinance requires solar arrays be setback 65 feet from the right of way of public roads and 200 feet from adjacent property lines of non-participating landowners. *Id.* at 14. An applicant for a Large Solar Energy System permit must provide a financial guaranty to the Town for performance of its "obligations for the project" and reimburse the Town for administrative expenses incurred while processing the permit. *Id.* at 12, 15. The Solar Ordinance requires a Large Solar Energy System to comply with fencing, noise, and maximum panel height requirements. *Id.* at 8-9, 12-13. It also requires a Large Solar Energy System to follow certain decommissioning protocol. *Id.* at 15-17. A Large Solar Energy System permit applicant must submit a variety of studies and plans to the Town, including a sound and vibration level study, a safety and security study, a battery storage plan (if applicable), a vegetative management plan, and others. *Id.* at 5-6. The Solar Ordinance regulates a variety of ancillary activities at Large Solar Energy Systems, including signage, lighting, and vegetation. *See, e.g., id.* at 14.

## Discussion

Two state statutes prohibit the Town from enforcing the Solar Ordinance. First, Wis. Stat. § 66.0401(1m) prohibits the Town from enacting Solar Ordinance. Second, Wis. Stat. § 196.491(3)(i) preempts the Solar Ordinance for any project that receives a Certificate of Public Convenience and Necessity ("CPCN") from the Public Service Commission of Wisconsin ("PSCW").

A. Wis. Stat. § 66.0401(1m) Prohibits the Town from Enacting the Solar Ordinance.

Wisconsin law expressly prohibits municipalities from restricting the installation or use of a solar or wind energy system unless the restriction (a) serves to preserve or protect public health or safety, (b) does not significantly increase the cost of the system or significantly decrease its efficiency, or (c) allows for an alternative system of comparable cost and efficiency. Wis. Stat. § 66.0401(1m). A municipality may only restrict the installation or use of a *specific* solar energy system, not any or all solar energy systems within its jurisdiction. *See Ecker Bros. v. Calumet Cnty*., 2009 WI App 112, ¶ 20-21, 321 Wis. 2d 51, 55, 772 N.W.2d 240 (2009). Whether a municipality's restriction fits within one of these limited categories for a specific solar energy system depends on the facts of a particular situation. *Id.* at ¶ 21. When a municipality creates restrictions without sufficiently developed facts about a particular solar energy system, it is impossible for it to determine if its ordinance improperly restricts that system. *Id.* As a result, a municipality may only restrict solar energy systems through a case-by-case procedure, such as a conditional use permit procedure. *Id*. It cannot make policy restricting solar energy systems. *Id.* The standards in Wis. Stat. § 66.0401(1m) limit the power of municipalities and are not openings for municipalities to legislate in conflict with the State's expressed policy favoring renewable energy and disfavoring local restriction of the same. *Id.* at ¶ 1, 21.

Here, the Town is prohibited from enacting the Solar Ordinance because it violates Wis. Stat. § 66.0401(1m). The Solar Ordinance is generally applicable policy restricting all solar energy systems in the Town. For example, the Solar Ordinance creates uniform setback distances for inverters and Large Solar Energy Systems without an individualized review. The Solar Ordinance places uniform decommissioning, financial, and informational obligations on permit applicants for a Large Solar Energy System. The Solar Ordinance has uniform requirements for the physical and operational characteristics of Large Solar Energy Systems, such as panel height, signage, fencing, noise levels, and others. Under the Solar Ordinance's permitting process, the Town inspects whether the permit applicant has met the uniform restrictions placed on Large Solar Energy Systems. The Town does not determine on a case-by-case basis whether such restrictions are necessary. The Solar Ordinance conflicts with state law favoring solar energy and disfavoring municipal restriction of the same, and it is therefore not valid.

B. Wis. Stat. § 196.491(3)(i) Preempts the Solar Ordinance for Any Project that Receives a CPCN From the PSCW.

A municipal ordinance that is preempted by state law is invalid. *Scenic Pit LLC v. Vill. of Richfield*, 2017 WI App 49, ¶ 8, 377 Wis. 2d 280, 900 N.W.2d 84. An ordinance is preempted by state law when (1) the legislature has expressly withdrawn the power of the municipality to act, (2) the ordinance logically conflicts with state legislation, (3) the ordinance defeats the purpose of state legislation, or (4) the ordinance violates the spirit of state legislation. *Id.*

Authorization to construct an electric generating facility that has 100 megawatts (MW) or more of capacity is within the PSCW's jurisdiction. *See* Wis. Stat. § 196.491(1)(g); Wis. Stat. § 196.491(3)(a). If the PSCW grants a CPCN for the construction of a solar energy project above 100 MW, the project can proceed without regard for conflicting local ordinances. *See* Wis. Stat. § 196.491(3)(i). Because of the state's explicit preemption, local government cannot enforce any ordinance governing the same subject matter that the PSCW is statutorily required to consider when granting a CPCN. *See American Transmission Co., LLC v. Dane Cnty*., 2009 WI App 126, ¶ 15, 321 Wis. 2d 138, 772 N.W.2d 731 (2009).

The Solar Ordinance attempts to regulate all Large Solar Energy Systems, including those with over 100 MW of capacity. However, the state legislature, through Wis. Stat. § 196.491(3)(i), has explicitly withdrawn the Town's authority to regulate a solar electric generation facility that has received a CPCN. If a company obtains a CPCN from the PSCW for a 100-MW or larger project, the company is entitled to construct the project without regard for the Solar Ordinance. As a result, the Solar Ordinance is invalid and unenforceable as applied to any project that receives a CPCN.

## Conclusion

The Solar Ordinance is prohibited by state law that expressly and prescriptively limits a local unit of government's ability to regulate a solar project. Further, a PSCW-issued CPCN for any project would preempt the Solar Ordinance. As a result, the Solar Ordinance is in violation of Wisconsin law.

# Town of Courtland

# Solar Energy Systems

# Licensing Ordinance

**Town of Courtland Solar Energy Systems Licensing Ordinance**

**Be it enacted by the Town Board of the Town of Courtland as follows:**

**Section 1. Title**

The title of this Ordinance is Solar Energy Systems Licensing.

**Section 2. Purpose, Application and Authority**

1. Purpose:

(a) The Town of Courtland (hereinafter also referred to as the "Town" or "Township") finds that while solar energy is a semi-renewable energy resource of electricity generation, and under some circumstances it may reduce the use of nonrenewable energy sources, the possible benefits must be balanced against potential negative impacts to local citizens, local economy, and local ecosystems.

(b) It is important that installation of Solar Energy Systems is accomplished in a safe, clean, and orderly manner that will minimize potential adverse biological, agricultural, visual, and other environmental impacts. Pursuant to the authority granted by Wis. Stats. § 66.0401, this ordinance is enacted to provide for Town review of proposed Solar Energy Systems and to ensure such systems are properly installed and are sited in a manner that will minimize any adverse impacts without significantly increasing the cost or efficiency of the proposed system or which permits an alternate system of comparable cost or efficiency.

2. Application: This Ordinance shall apply to all Solar Energy Systems not yet approved by the Town or any other governing body prior to the approval of this Ordinance.

3. Authority: This Ordinance is adopted under the powers granted to the Town of Courtland by Wis. Stat. §§ 60.10, 60.22(3), and 61.34, its authority under § 66.0401 and § 66.0403, and other authority under the statutes, and its adoption of village powers under §60.10(2)(c). Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal, or recreation.

**Section 3. General Procedures**

Where applicable, zoning permits and conditional use permits shall be applied for and reviewed under the procedures established following the Town of Courtland Code of Ordinances, including Building Permit and Electrical Permit issuance. Applications will also be reviewed for consistency with the Town of Courtland Comprehensive Plan in order to be in compliance with Wis. Stat. 66.1001(3).

All elements of the Solar Energy System are to comply with all applicable State, County and Town regulations.

**Section 4. Permits Required**

In addition to a building permit and electrical permit, a separate permit is required for a Solar Energy System installation as follows:

1. Roof-mounted Solar Energy Systems meeting the requirements of Section 7. (2) shall be administratively reviewed/permitted by the Building Inspector.

2. Ground-mounted and pole-mounted Solar Energy Systems meeting the requirements of Section 7. (3) covering between 100 and 1000 square feet shall be administratively reviewed/permitted by the Town. Systems over 1000 square feet shall require Plan Commission review and Town Board approval.

3. Wall-mounted Solar Energy Systems meeting the requirements of Section 7. (4) greater than 100 square feet shall be administratively reviewed/permitted by the Building Inspector.

4. Large Solar Energy Systems as identified in Section 7. (7) exceeding 1000 square feet of ground cover shall require Plan Commission review and Town Board approval.

5. The requirement for a permit may not be avoided by successive installations, each of which are smaller than the thresholds established herein. If a successive installation is presented (two or more installations within a 3-year period), such applications will require Town review/approval.

6. All permits shall be subject to the fee schedule approved by the Town Board.

7. Approval process flow chart:

BUILDING PERMIT REQUIRED FOR ALL INSTALLATIONS

| | NO PERMIT | PERMIT | PLAN COMMISSION APPROVAL & PERMIT |
|---|---|---|---|
| Ground | <100 SF | ≥100 <1000 SF | ≥ 1000 SF |
| Roof | ANY | --- | --- |
| Wall | <100 SF | ≥100 SF | --- |

**Section 5. Exempt Installations**

The following installations are exempt from a Solar Energy System Permit:

1. If solar panels and any accompanying equipment are mounted upon the roof of a principal structure or accessory structure and the accessory structure is erected primarily for purposes other than for the mounting of solar energy equipment.

2. Solar installations less than 100 square feet on a given parcel.

3. Installations oriented for public purposes, such as small panel installations for signage and lighting & related equipment within the right-of-way. A panel of 4 square feet or larger installed within the right-of-way requires a permit and Town Board approval.

4. Installations for Municipality owned public buildings or facilities, such as wastewater treatment plants, water treatment plans, water well houses, lift stations, municipal buildings, fire & emergency management facilities, and water towers.

**Section 6. Application**

An application for a permit under this Ordinance shall be submitted to the Town Clerk, in accordance with the Town's current policy and procedures and shall contain the following information:

1. A description of the Solar Energy System including size, method of installation, amount of power to be generated and whether the facility is for private residential or business use or for commercial energy production. The description shall also include technical specifications and supporting calculations necessary to demonstrate the structural integrity of the installation including, but not limited to the ability to withstand wind.

**2. Site Plan**

The site plan shall include the following information:

**(a) Existing Conditions:**

(i) Property lines

(ii) Buildings

(iii) Proposed installation location and details

(iv) Existing land use and features (woods, cropland, slopes exceeding 12%, wetlands, etc.).

(v) For Large Solar Energy Systems, existing sound, and vibration measurement, following the Wisconsin Dept. of Natural Resources Measurement Protocol for Sound and Vibration Assessment of Proposed and Existing Electric Power Plants (2008, or current version).

**(b) Proposed Plan**

(i) Proposed location and spacing of solar collectors.

(ii) Proposed location of access roads for ground-mounted installations with greater than 1,000 square feet of panels.

(iii) Proposed planned location of underground or overhead electric lines connecting the system to the building, substation, or other electric load.

(iv) Location of proposed new electrical equipment other than at the existing building or substation that is the connection point for the system.

(v) Proposed erosion and sediment control measures, as required by the Town Code.

(vi) Proposed stormwater management measures as required by the Town Code.

(vii) Sketch or schematic elevation of the premises accurately depicting the proposed Solar Energy System and its relationship to any buildings or structures on adjacent lots.

(viii) A description of the proposed method of connecting the system to a building or substation.

(ix) Proposed maintenance plan for grounds surrounding the system.

(x) Proposed plan outlining the use, storage, and disposal of chemicals used in the cleaning of the collectors and/or reflectors.

(xi) Proposed plan for the storage, operation, maintenance and possible disposal of any batteries serving the system.

(xii) Scaled elevation drawings covering the proposed facilities on the property.

(xiii) A description and drawing showing the screening/landscaping plan being proposed.

(xiv) Proposed safety and security plan.

(xv) For ground-mounted installations with greater than 1,000 square feet of panels, a health, safety, endangered species, and environmental sustainability plan is required.

(xvi) For ground-mounted installations with greater than 1,000 square feet of panels, a geotechnical report for the site from a qualified geotechnical engineer. (Township reserves the right to seek corroboration from a different geotechnical engineer of their choice for validation.)

(xvii) For ground-mounted installations with greater than 1,000 square feet of panels, a proposed sound and vibration level study, following the Wisconsin Dept. of Natural Resources Measurement Protocol for Sound and Vibration Assessment of Proposed and Existing Electric Power Plants (2008, or current version).

(xviii) For ground-mounted installations with greater than 1,000 square feet of panels, a decommissioning plan outlining the anticipated means and cost of removing the system at the end of its serviceable life or upon it becoming a discontinued use. The plan shall also identify the financial resources to be set aside to pay for the decommissioning and removal of the system.

**(c) Miscellaneous**

(i) The name, address, and telephone number of the owner of the property upon which the system is to be installed. If the applicant is different from the property owner, then this information shall be provided for the applicant as well. Also, the name and address of the party responsible for maintaining the system.

*(ii)* An explanation of the factors considered in siting the facility at its proposed location.

**Section 7. Solar System Regulations**

1. General Standards. The following standards shall be applicable to all Solar Energy Systems:

(a) Systems shall be designed and operated in a manner that protects public safety.

(b) Systems shall be compliant with any applicable local, state, and federal regulatory standards, including, but not limited to, the State of Wisconsin Uniform Building Code, as amended, and the National Electric Code, as amended.

(c) At the discretion of the Building Inspector, systems proposed for attachment to a building or structure shall include a structural certification prepared by a registered professional engineer licensed in the state of Wisconsin.

(d) Systems that result in the creation of one (1) or more acres of land disturbance, must provide plans that comply with the WDNR NR 216 and NR 151 Construction Stormwater Permit Requirements prior to final stormwater and erosion control permitting at the Town.

(e) Systems shall not be used to display advertising, including signage, streamers, pennants, spinners, reflectors, ribbons, tinsel, balloons, flags, banners, or similar materials. The manufacturers and equipment information, warning, or indication of ownership shall be allowed on any equipment of the Solar Energy System provided they comply with the prevailing sign regulations.

(f) Tree removal shall be minimized and mitigated in accordance with proper site design.

(g) Screening and/or sound reducing mechanisms are required for all Large Solar Energy Systems, and any installation where noise producing infrastructure is located outdoors.

(h) For ground-mounted installations with greater than 1,000 square feet of panels, the applicant shall submit a decommissioning plan, per the standards of this Ordinance, with the permit application.

(i) Systems shall be designed to integrate into the architecture of the building or site, to the extent such provisions do not diminish solar production or increase energy costs.

(j) Systems shall be designed and operated to prevent the misdirection of reflected solar radiation onto adjacent or nearby property, public roads, or other areas open to the public.

(k) Power inverters and any sound-producing equipment shall be at least 500 feet (but no more than half the distance of the greatest side-length of the array) from any real property line adjacent to the Parcel covered by the application. A Large Solar Energy System application submitted shall also include a plan for a sound reducing enclosure, or another sound barrier (such as a berm) to reduce the sound emanating onto an adjacent residential parcel, to a level no more than 35 dB with no pure tone noise (at boundary line), which plan shall be subject to the review and approval of the Town Board.

(l) Two or more written complaints regarding noise from a Solar Energy System within a 12-month period, or failure to upkeep/maintain necessary screening for the same, may be deemed a nuisance or a violation of this ordinance.

2. Roof-mounted Solar Energy Systems. The following standards shall apply to roof mounted Solar Energy Systems:

(a) Roof-mounted Solar Energy Systems shall not exceed by more than four (4) feet the existing maximum roofline at the point of installation.

(b) In addition to the structure setback, the collector surface, and mounting devices for roof- mounted solar systems shall not extend beyond the exterior perimeter of the structure on which the system is mounted or built.

(c) The collector and racking for roof-mounted systems that have a greater pitch than the roof surface shall be set back from all roof edges by at least two (2) feet.

(d) Exterior piping for roof-mounted solar hot water systems may extend beyond the perimeter of the structure on side and rear yard exposures.

(e) Roof-mounted solar systems, excluding building-integrated systems, shall not cover more than eighty percent (80%) of the surface upon which the collectors are mounted.

3. Ground-mounted and pole-mounted Solar Energy Systems. The following standards shall apply to ground and pole-mounted Solar Energy Systems:

(a) Ground and pole-mounted systems shall not exceed ten (10) feet in height measured from the top of the panel frame when oriented at maximum design tilt.

(b) Ground and pole-mounted systems shall not extend into the side-yard, rear, or road right-of-way setback when oriented at minimum design tilt.

(c) Ground and pole-mounted systems shall have natural ground cover under and between the collectors and surrounding the system's foundations or mounting device(s).

(d) The total collector surface area of pole or ground mount systems shall not exceed fifty percent (50%) of the building footprint of the principal structure for systems located in all residential and commercial zoning districts.

4. Wall-mounted Solar Energy Systems. The following standard shall apply to wall-mounted Solar Energy Systems:

(a) In residential zoning districts, wall-mounted Solar Energy Systems shall cover no more than twenty-five percent (25%) of any exterior wall facing a front yard.

5. Accessory-mounted Solar Energy Systems. The following standards shall apply to accessory Solar Energy Systems:

(a) Accessory Solar Energy Systems must meet all setback requirements pertinent to accessory structures for the zoning district in which the structure is situated.

(b) Accessory Solar Energy Systems shall not be located nearer the front lot line than the principal building on the lot.

6. Photovoltaic Solar Energy Systems. The following standards shall apply to Photovoltaic Solar Energy Systems:

(a) For Photovoltaic Solar Energy Systems, the electrical disconnect switch shall be clearly identified and unobstructed.

(b) No grid-tie Photovoltaic Solar Energy System shall be installed until documentation has been given to the Town that the owner has notified the utility company of the customer's intent to install an interconnected customer-owned generator. Documentation may consist of an interconnection agreement or a written explanation from the utility provider or contractor outlining why an interconnection agreement is not necessary. Off-grid systems are exempt from this requirement.

(c) Photovoltaic Solar Energy System components must have an Underwriters Laboratory (UL) listing.

7. Large Solar Energy Systems.

For purposes of this Ordinance, all Large Solar Energy Systems shall be considered as commercial structures for the purposes of compliance with other provisions of the Town Code of Ordinances. All applications for a Primary Use Energy System shall be conditioned upon entering into a Memorandum of Understanding with the Town that addresses how the applicant will comply with the requirements of this Section. The following standards shall apply to Large Solar Energy Systems, to be reviewed and subject to approval by the Plan Commission under Conditional Use Review:

(a) All elements of the system shall meet or exceed all district regulations based on the applicable zoning district.

(b) The area utilized for a Large Solar Energy System shall not interfere with normal development trends anticipated by current development, road extensions, or other aspects of orderly and efficient planned development.

(c) Systems that result in the creation of one (1) or more acres of land disturbance, must provide plans that comply with the WDNR NR 216 and NR 151 Construction Stormwater Permit Requirements prior to final stormwater and erosion control permitting by the Town pursuant to the Town Code.

(d) The manufacturer's engineer or another qualified engineer shall certify that the soils/foundation and design of the Solar Energy System is within accepted professional standards licensed in the State of Wisconsin.

(e) Power and communication lines running between banks of solar collectors and to electric substations or interconnections with buildings shall be buried underground. Exemptions may be granted in instances where shallow bedrock, water courses, or other elements of the natural landscape interfere with the ability to bury lines.

(f) Vegetative screening of the system may be required as a part of Site Plan Review and/or the conditions of approval and it shall be based on the proximity of the system to residential buildings and to abutting public rights-of-way. If screening is required, the vegetation shall be at the licensee's cost and consist of canopy and conifer trees at a minimum.

(g) The applicant shall complete a sound and vibration level study, following the Wisconsin Dept. of Natural Resources Measurement Protocol for Sound and Vibration Assessment of Proposed and Existing Electric Power Plants (2008, or current version).

(h) The applicant shall document existing sound and vibration by measurement, following the Wisconsin Dept. of Natural Resources Measurement Protocol for Sound and Vibration Assessment of Proposed and Existing Electric Power Plants (2008, or current version).

(i) The proposed plan outlining the use, storage, and disposal of chemicals used in the cleaning of the collectors and/or reflectors shall be provided.

(j) The proposed plan for the storage, operation, maintenance, and possible disposal of any batteries serving the project shall be provided.

(k) The proposed plan for safety and security shall be submitted.

(l) A decommissioning plan shall be completed and shall outline the anticipated means and cost of removing the system at the end of its serviceable life or upon it becoming a discontinued use. The plan shall also identify the financial resources to be set aside to pay for the decommissioning and removal of the system.

(m) Confirmation of the site's health, safety, retention or avoidance of endangered species and environmental sustainability.

(n) All areas on the Property within any fenced in area shall be kept free of weeds and the grass shall be cut to a height of 12 inches or less.

(o) The applicant shall obtain the approval of the Town or Town Engineer Appointee for erosion and runoff control measures as required by the Town and County Ordinances prior to grading, utility installation, or any other land disturbance activity. Separate approvals shall be obtained for each activity. The applicant shall adhere to the conditions of the approval and shall grant the right of re-entry to the property to designated personnel of the Town to inspect and monitor compliance with this requirement. Erosion control measures shall comply with the Wisconsin Construction Site Best Management Practice Handbook.

(p) The primary roads to be used by the applicant shall be determined by the Town as part of the permit issuing process. Within a reasonable time after determining the primary roads, the Town and applicant shall document the condition of the primary roads. Documentation shall consist of, among other things, taking a video inventory of the primary roads to establish existing conditions and rating the primary roads according to the PASER Road Inventory System. Except as otherwise noted below, the primary roads described above, which shall be used for all trucks, loaded and unloaded, entering or leaving the project shall be the only roads used by the applicant during the construction of the project. Once the primary roads are determined, the applicant and the Town shall discuss and mutually agree upon a Project specific road agreement. The terms of the road agreement shall include but not be limited to the extent and frequency of when applicant shall make repairs to the primary roads. Monthly, or at a lesser interval if so chosen by the Town, applicant and the Town or Town Engineer shall conduct an inspection of the primary roads and, if necessary, the applicant shall be required to pay for or make repairs and/or improvements satisfactory to the Town to restore the primary roads to the condition documented at the commencement of the Project or better. Upon the conclusion of the Project, a final inspection and review shall be conducted by the Town and applicant and final repairs and/or improvements made by applicant as required by this paragraph (p) shall be made prior to the release of applicant's financial guarantee as required by section (q).

(q) The applicant shall obtain and deposit with the Town of Courtland Clerk a financial guaranty consisting of a Surety Bond or an Irrevocable Letter of Credit in the amount to be determined by the Town or Town Engineer to guarantee the performance of all of its obligations for the project, including maintenance and reconstruction of all primary roads identified for the installation of the Large Solar Energy System. The financial guarantee shall run in favor of the Town and shall be in a form acceptable to the Town and/or Town Attorney. The financial guarantee shall guarantee the applicant's obligations for the project and that, in the event the parties are unable to agree on the maintenance or reconstruction of any primary road at any time, the bond will be available to the Town for that purpose.

(r) Other than the fencing directly surrounding the project substation, Operations and Maintenance Building, and Battery Energy Storage System, the Project's perimeter fencing shall consist of "deer fencing" (wire mesh), which is a six- to ten-foot-tall woven wire partition with wooden posts. Where commercially reasonable, fences will be set 50 feet within/inside property lines or rights of-way edges unless otherwise requested from the landowner and agreed upon with the adjacent landowner.

Installed fencing shall be adequately maintained at all times during the Project's operation. The depths of the fence posts shall be installed per prudent engineering practice based on the height of the fence and the type and slope of the terrain. Impairments to either the woven wire or wooden posts that are aesthetically unpleasing shall be remedied within two weeks of written notification. "Leaning" of the fence shall not be allowed to exceed plus or minus 10 degrees of perpendicular. In the event leaning or tilting of the fence does occur, it will be corrected back to perpendicular within three weeks of receiving written notice on the issue or the Town may fine the applicant thrice the cost it would take to repair it.

For purposes of this Agreement, the term "commercially reasonable" shall mean done in good faith and corresponding to accepted commercial practices in the solar energy industry.

(s) Applicant shall contract with an experienced and qualified regional drain tile contractor to gather information concerning participating landowner drain tile, avoid said tile where commercially reasonable, and mitigate the landowner and non-participating landowners' drainage issues where significant impact is expected as a result of drain tile alteration. The applicant shall identify drain tile concerns at the pre-construction and post-construction meetings to finalize remedies to known drainage issues on either participating or non-participating property. Applicant shall receive, investigate, and remedy drain tile issues due to the Project that arise subsequent to the post-construction meeting pursuant to the Drain Tile Management Plan filed by applicant and approved by the Town Board.

If drainage infrastructure or systems are damaged by the Project and the result is reduced drainage performance that adversely affects non-participating landowners, applicant shall restore the drainage infrastructure or system to pre-existing condition or better. Pre-existing condition shall mean the flow capacity existing immediately prior to the Project commencing construction. If previous flow capacity cannot be determined, applicant and landowners agree to negotiate an adequate solution in good faith. Applicant is responsible for all expenses related to repairs, restoration, relocations, reconfigurations and replacements of drainage infrastructure and systems that are damaged by the Project. The intent of this Section is to make landowners whole where drainage infrastructure or systems are damaged by the Project. For example, and without limitation due to enumeration, if damage to drainage infrastructure or systems is caused by the Project on a participating property ("Project-related Damage"), and the Project related Damage causes damages to non-participating property owners upstream of the Project-related Damage, including crop loss and/or blowout damage to the drain tile system on the non-participating owner's property, Project Owner shall reasonably compensate the non-participating owner for crop loss and for repairs to the non-participating property owner's drain tile system.

Applicant agrees to cooperate with non-participating landowners that desire to repair or replace drainage tile affecting their properties to the extent that such work does not interfere with the Project or its related facilities. Applicant will not unreasonably withhold approval for access to the Property that lies outside of any fenced array area, to the extent participating property owners also agree to such access.

(t) The applicant shall hire a regionally qualified consultant to create a ground cover and vegetation management plan for the construction and operation of the project. Consultation shall occur with the Town during the pre-construction meeting and post-construction meeting. Where commercially reasonable, the Project will utilize native plants and grasses across the project's developed area and incorporate pollinator habitat. During Project operation, the applicant will spray, mow, and otherwise maintain all developed acreage inside the fence set forth in (n) above.

(u) The Project shall not be used for any type of advertising. The Project may erect and maintain a single project identification sign. The Project shall be minimally lighted so as not to disturb neighboring properties. Necessary lighting to provide safety and security of facilities shall be approved by the Town Board. Applicant will provide the Town with a description of permanent Project lighting plans when available. Applicant shall contact every owner of residential property immediately adjacent to solar arrays and discuss in good faith a reasonable, strategically located visual buffer of plants that, upon mutual agreement, shall be installed at applicant's expense prior to the completion of construction of the Project. Where applicant and the adjacent property owner are unable to agree on the type of visual buffer and the adjacent property owner makes a request in writing to applicant to provide a visual buffer, the applicant shall install a vegetative buffer on the Project site equal to the length of the non-participating residence and designed to achieve at least 50% opacity at ground level within 5 years. Proposals and plans for vegetative buffers will be finalized by the post-construction meeting. Applicant shall be required to replace any vegetative buffer that dies within two years of its original planting.

(v) Applicant agrees to install the solar arrays with a minimum setback of (i) sixty-five (65) feet from the edge of the right of way of public roads, (ii) two hundred (200) feet from the property boundary lines of non-participating landowners, unless a larger setback is necessary in order to preserve public health and safety based on a case-by-case analysis of a Solar Energy System application. A smaller setback is permitted pursuant to an executed good neighbor agreement, in which case the setback shall be no less than twenty-five (25) feet, and (iii) one hundred (100) feet from any non-participating landowner dwelling unit. For adjoining participating landowners, the setback requirement may be established pursuant to mutual agreement between applicant and participating property owners.

(w) The applicant acknowledges that the Town has and will incur certain administrative and/or legal costs for, among other things, processing, posting, or mailing of public hearing notifications, studying and/or drafting documents, and reviewing the integrity of the primary roads serving as access to the property. As a condition of obtaining a permit, the applicant agrees to pay all of the necessary and reasonable administrative, engineering and legal costs incurred by the Town for, among other things, processing, posting, or mailing of public hearing notifications, studying and/or redrafting documents, and ensuring the integrity of any portion of any road serving as an access to a facility site. Applicant understands the legal and/or engineering consultants retained by the Town are acting exclusively on behalf of the Town and not the applicant. Applicant agrees to reimburse the Town for all administrative expenses within 30 days of billing. In the event applicant defaults in the payment of such expenses, in addition to any other remedies which the Town may be entitled, the Town may take funds from the financial guaranty set forth in (q) above and the Town shall recover from applicant all of its costs in enforcing this Ordinance including reasonable attorney fees.

8. Miscellaneous

(a) All Solar Energy Systems shall be installed following the Manufacturer's specifications and recommended installation methods for all major equipment, mounting systems, and foundations for poles or racks.

(b) All property owners shall provide the Town with a signed copy of the interconnection agreement with the local electric utility or a written explanation outlining why an interconnection agreement is not necessary.

(c) In connection with construction, operation and maintenance of electric collection lines, communications cables and other equipment, Project facilities may crossroad rights-of-way and/or drainage systems. Project Owner shall obtain all permits typically required of others, such as driveway permits and rights-of-way crossing permits. It is agreed that all road right-of- way crossings shall be by underground borings perpendicular to the right-of-way, plus or minus 30 degrees. All underground borings shall commence and terminate outside of the right-of-way.

**Section 8. Decommissioning**

The following provisions shall apply to decommissioning:

1. Decommissioning of the system must occur within one (1) year from either the end of the system's serviceable life or from the time that the system becomes a discontinued use. A system shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and timely submitted to the Town outlining the steps and schedule for returning the system to service.

2. Decommissioning shall consist of the following:

(a) The removal of the system's equipment and the removal of the system's foundation to a depth of at least five (5) feet under the surface of the ground. An exemption from this requirement may be granted by the Town if it is determined that the removal of the foundation will significantly increase erosion and/or significantly disrupt vegetation on the site.

(b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

(c) The stabilization of soils and/or re-vegetation of the site as necessary to minimize erosion and promote soil nutrient and soil carrying capacity.

3. The decommissioning shall occur in accordance with the decommissioning plan approved by the Town, or any plan amendment approved by the Town.

4. The applicant shall provide the Town with at least two years notice prior to the actual beginning of the decommissioning process. The security as required by (5) below shall be posted with the Town Clerk at least six months prior to the beginning of the decommission process.

5. At the time decommissioning begins, all applicants shall obtain and deposit with the Town of Courtland clerk a financial guarantee consisting of a Surety Bond or an Irrevocable Letter of Credit in an amount to be determined by the Town or Town Engineer to guarantee the performance of all of its obligations concerning the decommissioning of the project. The surety shall run in favor of the Town and shall be in a form acceptable to the Town and/or Town Attorney. The surety shall guarantee the applicant's obligations under this Agreement and that, in the event the parties are unable to agree on the steps required to complete decommissioning, the surety will be available to the Town for that purpose.

6. The applicant acknowledges that the Town has and will incur certain administrative and/or legal costs for, among other things, processing, drafting documents and reviewing the decommissioning of the project. The applicant agrees to pay all of the necessary and reasonable administrative, engineering and legal costs incurred by the Town for, among other things, processing, studying, redrafting documents and to ensure the integrity of the decommissioning process Applicant understands the legal and/or engineering consultants retained by the Town are acting exclusively on behalf of the Town and not the applicant. Applicant agrees to reimburse the Town for all administrative expenses within 30 days of billing. In the event applicant defaults in the payment of such expenses, in addition to any other remedies which the Town may be entitled, the Town may take funds for the financial guaranty as set forth in (5) above, the Town shall recover from applicant all of its costs in enforcing this Ordinance including reasonable attorney fees.

**Section 9. Review**

Preliminary review, preliminary hearing, and proposed decision:

1. The Plan Commission shall review all required applications under this Ordinance within sixty (60) days of a complete submittal and make its recommendation to the Town Board. If the Plan Commission determines more information is necessary to evaluate the application, it may postpone its recommendation for up to an additional ninety (90) days, but no further postponements shall occur without the consent of the applicant. The Plan Commission may recommend approval, approval effective upon the satisfaction of conditions, or denial. The Plan Commission's recommendation shall be made to further the purposes of this Ordinance.

2. The Town Board shall begin its review of the application and Plan Commission's recommendation at its next meeting after receipt of the Plan Commission's recommendation. The Town Board may accept, reject, or modify the Plan Commission's recommendation under the same criteria as applied for the Plan Commission's review.

3. The Plan Commission or the Town Board may request that the applicant submit additional information if the Plan Commission or Town Board determines that the application is incomplete, or if the Plan Commission or Town Board determines that additional information is needed to determine whether the requested approval will meet the requirements of this Ordinance.

4. Upon completion of its review of the application and a review of any report from retained experts, the Town Board shall issue a proposed decision on whether to grant a solar license, with or without conditions, or to deny the application or request.

5. Decision by the Town Board

(a) Notice and Hearing: Proposed Decision. Upon the issuance of a proposed decision under sub. (4), the Town Clerk shall place the preliminary decision of the Town Board on the Town's website or typical posting places and make it available for public inspection at the Town Hall. The Town Board shall set a date for a public hearing on the preliminary decision and, for an application for a solar license, give Class II public notice and post the notice in the designated posting places at least 15 days prior to the date scheduled for the hearing, and mail the notice to all neighboring landowners. At the public hearing, the Town Board shall take public comment on the proposed decision.

(b) Town Board Final Decision: Following the receipt of public comments at the public hearing and any submitted written comments the Town Board may make a final decision whether to grant a solar license or set a date for a subsequent Town Board meeting during which the Town Board will make a final decision.

(c) Basis of Proposed and Final Decisions: The Town Board shall base its proposed and final decisions on a review of the application, any available retained experts' reports, public comments and information provided at the public hearing, and other relevant information at the discretion of the Town Board.

(d) In the case of an application for a solar license, the Town Board shall grant the license if it determines that the operation of the System will be consistent with the standards and the purposes of this Ordinance.

(e) Any person aggrieved by the action taken by the Board, may appeal as provided by Wisconsin statutes.

**Section 10. Fees**

1. An application under this Ordinance shall be accompanied by a fee and, if applicable, an escrow payment in accordance with the Town's fee schedule and escrow procedures. No action may be taken on the application until such fee is paid and the escrow is maintained current with a positive balance.

2. If the application is for a Large Solar Energy System or a Primary Use Solar Energy System, the application shall be accompanied by an escrow fee, as provided under the Town's Fee Schedule, and a Reimbursable Services Agreement, signed by the applicant, and the property owner if different from the applicant, to reimburse the Town for all actual costs incurred reviewing the application, including but not limited to consultants' fees for attorneys, engineers, planners or other relevant specialists. Final approval may not be effective until all such costs are reimbursed according to the agreement. If such costs are not paid within sixty (60) days of final invoice, such costs may be placed on the tax roll for the subject property as a special charge pursuant to Wis. Stats. § 66.0627. Placement on the tax roll, however, shall not constitute payment for purposes of permit issuance.

**Section 11. Definitions**

For the purpose of this Ordinance, the following terms shall have the meaning given to them in this section. To the extent a term is used in this Ordinance is not defined in this section, the term shall have the meaning given in the Town of Courtland Code of Ordinances.

1. Awning – A sheet of material stretched on a frame and used to keep the sun or rain off a storefront, window, doorway, patio, or deck.

2. Decibel – A unit of measure of sound pressure.

3. dB(A), A-Weighted Sound Level – A measure of over-all sound pressure level in decibels, designed to reflect the response of the human ear.

4. Generator Nameplate Capacity – The maximum rated output of electrical power production of a generator under specific conditions designated by the manufacturer with a nameplate physically attached to the generator.

5. Maximum Design Tilt (Solar Energy System) – Maximum tilt, or angle, is vertical, or ninety (90) degrees for a Solar Energy System designed to track daily or seasonal sun position or capable of manual adjustment on a fixed rack.

6. Minimum Design Tilt (Solar Energy System) – Minimum tilt, or angle, is horizontal, or zero (0) degrees for a Solar Energy System designed to track daily or seasonal sun position or capable of manual adjustment on a fixed rack.

7. Nameplate Capacity – The total maximum rated output of a Solar Energy System.

8. Panel - A solar collector of approximately 20 nominal square feet or 3-4 feet in width by 4-6 feet in height.

9. Power Line – An overhead or underground conductor and associated facilities used for the transmission or distribution of electricity.

10. Power Purchase Agreement – A legally enforceable agreement between two or more persons where one or more of the signatories agrees to provide electrical power and one or more of the signatories agrees to purchase the power.

11. Pure Tone – A sound composed of a single frequency.

12. Qualified Independent Acoustical Consultant – A person with Full Membership in the Institute of Noise Control Engineers (INCE), or other demonstrated acoustical engineering certification. The Independent Qualified Acoustical Consultant can have no financial or other connection to an applicant.

13. Real Property Line – The imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

14. Receptor – Structures intended for human habitation, whether inhabited or not, including but not limited to churches, schools, hospitals, public parks, state and federal wildlife areas, the manicured areas of recreational establishments designed for public use, including but not limited to golf courses, and campgrounds.

15. Renewable Energy – Energy from sources that are not easily depleted such as moving water (hydro, tidal and wave power), biomass, geothermal energy, solar energy, wind energy, and energy from solid waste treatment plants.

16. Roof Pitch – The final exterior slope of a building roof calculated by the rise over the run, typically but not exclusively expressed in twelfths, such as 3/12, 9/12, or 12/12.

17. Solar Collector – A device, structure, or part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

18. Solar Daylighting – A device specifically designed to capture and redirect the visible portion of the solar spectrum, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

19. Solar Energy – Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

20. Solar Energy Device – A system or series of mechanisms designed primarily to provide heating, cooling, electrical power, mechanical power, solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means. Said systems may also have the capacity to store energy for future utilization. Passive Solar Energy Systems shall clearly be designed as a solar energy device, such as a Trombe Wall, and not merely part of a normal structure, such as a window.

21. Solar Energy System (SES)– A set of devices that the primary purpose is to collect solar energy and convert and store it for useful purposes including heating and cooling buildings or other energy-using processes, or to produce generated power by means of any combination of collecting, transferring, or converting solar energy. This definition also includes structural design features, the purpose of which is to provide daylight for interior lighting.

22. Solar Energy System, Accessory Use – A Solar Energy System that is secondary to the primary use of the parcel on which it is located, and which is directly connected to or designed to serve the energy needs of the primary use. Excess power may be sold to a power company.

23. Solar Energy System, Active – A Solar Energy System whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

24. Solar Energy System, Building Integrated – An active Solar Energy System that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Such systems include, but are not limited to, Solar Energy Systems that function as roofing materials, windows, skylights, and awnings.

25. Solar Energy System, Grid-intertie – A photovoltaic Solar Energy System that is connected to an electric circuit served by an electric utility company.

26. Solar Energy System, Ground-mounted – A solar collector, or collectors, located on the surface of the ground. The collector or collectors may or may not be physically affixed or attached to the ground. Ground-mounted systems include pole-mounted systems.

27. Solar Energy System, Large (Large scale) – A Solar Energy System with a size greater than 1,000 square feet inclusive of panels and supporting equipment.

28. Solar Energy System, Off-grid – A photovoltaic Solar Energy System in which the circuits energized by the Solar Energy System are not electrically connected in any way to electric circuits that are served by an electric utility company.

29. Solar Energy System, Passive – A Solar Energy System that captures solar light or heat without transforming it to another form of energy or transferring the heat via a heat exchanger.

30. Solar Energy System, Photovoltaic – An active Solar Energy System that converts solar energy directly into electricity.

31. Solar Energy System, Primary Use – A Large Scale Solar Energy System which generates power for sale to a power company, or other off-premise consumer.

32. Solar Energy System, Reflecting– A Solar Energy System that employs one or more devices designed to reflect solar radiation onto a solar collector. This definition includes systems of mirrors that track and focus sunlight onto collectors located at a focal point. The collectors may be thermal or photovoltaic.

33. Solar Energy System, Roof-mounted – A solar collector, or collectors, located on the roof of a building or structure. The collector or collectors may or may not be physically affixed or attached to the roof.

34. Solar Energy System, Small – A Solar Energy System with a size of less than 1,000 square feet of panels.

35. Solar Heat Exchanger – A component of a solar energy device that is used to transfer heat from one substance to another, either liquid or gas.

36. Solar Hot Air System – Also referred to as solar air heat, or a solar furnace. An active Solar Energy System that includes a solar collector to provide direct supplemental space heating by heating and re-circulating conditioned building air. The most efficient performance typically means vertically mounted on a south-facing wall.

37. Solar Hot Water System – Also referred to as a solar thermal. A system that includes a solar collector and heat exchanger that heats or preheats water for building heating systems or other hot water needs, including domestic hot water and hot water for commercial or industrial purposes.

38. Solar Mounting Devices – Devices that allow the mounting of a solar collector onto a roof surface, wall, or the ground.

39. Substation – Any electrical facility containing power conversion equipment designed for interconnection with power lines.

40. Transmission line – See Power Line.

41. Total Name Plate Capacity – The total of the maximum rated output of the electrical power production equipment for a combined solar project.

**Section 12. Inspection, Penalties and Enforcement**

1. Enforcement:

(a) Enforcement of this Ordinance shall be by means of revoking the permit for multiple violations of this Ordinance following written notice from the Town and a failure of the applicant to cure the violations, impositions of forfeitures, and/or injunctive action. Forfeitures shall not be less than $250.00, nor more than $5,000.00 for each day of non-compliance, together with the costs of prosecution. If such forfeitures are not paid within sixty (60) days of notice, such costs may be placed on the tax roll for the subject property as a special charge pursuant to Wis. Stats. § 66.0627. Placement on the tax roll, however, shall not constitute payment.

(b) Enforcement may also be in the form of injunctive relief. If injunctive relief is sought and granted, the defaulting party shall pay all of the Town's costs and expenses, including reasonable attorney's fees, incurred in enforcing the provisions of this Ordinance, whether incurred prior to or after the commencement of any lawsuit. Unpaid amounts shall bear interest at the rate of twelve percent (12%) per annum if not paid within thirty (30) days of billing.

(c) A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).

2. Inspection:

The Town Board, a retained expert, or another authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a System in the Town to safeguard the health and safety of the public and to determine compliance with this Ordinance, upon showing proper identification and providing reasonable notice.

3. Violations.

The following are violations under this Ordinance:

(a) Engaging in construction, installation, or operation of a System without a solar license granted by the Town Board.

(b) Failure to comply with the applicable minimum standards and other terms of this Ordinance and established industry standards.

(c) Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.

(d) Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.

(e) Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the town.

4. Remedies.

The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

(a) Issue a stop work order.

(b) Issue a notice of violation and order that specifies the action to be taken to remedy a situation.

(c) Issue a citation.

(d) Refer the matter to legal counsel for consideration and commencement of legal action, including the assessment of forfeitures under sub. (6) and injunctive relief.

(e) Suspend or revoke the solar license under sub. (3) in the event there are repeated exceedances of the standards or conditions incorporated into a solar license or developer agreement.

**Section 13. Severability**

1. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions or applications of this Ordinance, which can be given effect without the invalid provisions or application, and to this end, the provisions of this Section are severable.

2. The provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to limit or repeal any other power now possessed by or granted to the Town.

**Section 14. Effective Date**

This Ordinance shall be effective upon publication and posting as provided by law.

Dated this 21 day of June, 2023

THE TOWN BOARD OF THE TOWN OF COURTLAND,
COLUMBIA COUNTY, WISCONSIN

By:

Derek Granquist, Chairperson

Alex Herzberg, Supervisor

Molly Gursky, Supervisor

Attest:

Mary Jean Eisenga, Clerk

COLUMBIA COUNTY
Corporation Counsel

608-742-9801
FAX: 608-742-9812
E-MAIL: corporation.counsel@co.columbia.wi.us
WEBSITE: www.co.columbia.wi.us

112 East Edgewater Street
P.O. Box 63
Portage, WI 53901

**To: Columbia County Chair Chris Polzer**

**From:** Corporation Counsel

**RE:** A Moratorium on Solar Energy and related Actions and Costs

**Date:** April 13, 2023

---

On March 15, 2023, before the full Columbia County Board of Supervisors, Supervisor Kohlberg motioned for Columbia County to hold a public hearing on a solar energy moratorium in Columbia County. The motion and related action is as follows:

> Motion by Kolberg to hold a Public Hearing at the next full Board meeting to consider an act on a moratorium on issuance of any zoning or conditional use permits for the purpose of constructing a solar facility or battery storage system. Second by Groves. The motion carried, not unanimously.
>
> It was clarified the public hearing would be for discussion only and no action would be taken. Groves stated this would need to be legally and publicly noticed 30 days prior to County Board meeting.

Draft Minutes, March 15, 2023, Columbia County Board meeting, page 24.

This memorandum was requested after the above motion was made and passed by the Columbia County Board of Supervisors. It summarizes the applicable law, both generally on solar energy as well as regarding this moratorium, and the accrual of related costs to date as well and into the future.

## I. Summary

Wisconsin law limits what Wisconsin counties like Columbia County may do when considering solar energy. No Wisconsin law provides Columbia County with the authority to adopt a moratorium on solar energy facilities or their related permits. Despite the County staff's many attempts to provide information on the law and process, those County resources have been largely

ignored. The continued pursuit of legally prohibited actions, such as this moratorium, has and will continue to directly cause the accrual of unnecessary and unbudgeted for expenses by the County.

**II. Applicable Energy Law**

Before turning to the applicable energy law, several general concepts are essential to know.

First, Wisconsin law defines the ability to regulate solar energy projects in this State. While this may appear to be a self-evident statement, multiple references and statements have been made throughout this matter concerning what other states have done or are doing on solar energy. However, those are inapplicable and are therefore irrelevant. Notwithstanding Federal law, only Wisconsin law applies to Wisconsin.

Second, preemption applies to this subject matter. Preemption is a legal concept, that when looking at the hierarchy of laws, the higher law supplants, or preempts, the lower regulation. For example, unless by exception, Federal law preempts state law; and state law preempts local law.

Turning next to the subject of solar energy, note, the Wisconsin legislature adopted a policy, and goal, for newly installed capacity for electricity be from renewable forms, including solar, years ago. *See* Wis. Stat. § 1.12(3)(b). In doing so, the Legislature enacted law limiting local authority over solar energy. Instead, Wisconsin solar energy law vests most regulatory authority with the State. Aside from that allowed by Wis. Stat. § 66.0401(1m)(a-c), local restrictions on solar energy are preempted by State law.

Solar energy projects are divided and considered by size in Wisconsin.

Those at or over one hundred megawatts are regulated by the Wisconsin Public Service Commission (PSC). *See* Wis. Stat. § 196.491. Projects of this size are reviewed by the PSC and it alone decides whether a certificate of public convenience and necessity is appropriate. *Id.* "Local ordinances, such as zoning ordinances, cannot impede what has been determined to be of public convenience and necessity." *RURAL v. Public Service Commission of Wisconsin*, 239 Wis.2d 660, ¶ 65, 619 N.W.2d 888 (2000). If a local ordinance is enacted attempting to limit these projects, the projects may still continue. *See* Wis. Stat. § 194.491(4)(c)3. ("If construction or utilization of a high-voltage transmission line described in subd. 1m. or 1s. is precluded or inhibited by a local ordinance, the construction and utilization of the line may nevertheless proceed.").

When considering Dane County's attempt to locally regulate shoreland zoning and erosion control, the Court of Appeals found against that county and held that Wis. Stat. § 196.491(3)

preempts local regulation on those matters already regulated by the PSC, including on issues such as environmental factors, land use, and development plans. Going beyond this, it also held:

> The only reasonable reading of *RURAL* is that WIS. STAT. § 196.491(3)(i) "abrogates," in the court's own words, local regulations that govern the same subject matter that the PSC is required by statute to consider in granting a certificate for public convenience and necessity. The necessary implication of the court's analysis is that *any* enforcement of local regulations governing those matters impedes or inhibits the project.

*Id*., 2008 WI AP 2604, ¶ 15, 321 Wis.2d 138. Otherwise stated, local attempts to restrict or enforce matters through the permitting process that are to be considered by the PSC are preempted. *See American Transmission v. Dane County*, 2008 WI AP 260, ¶ 19.

Local governments have some control over those facilities under one hundred megawatts but it is that specifically allowed by Wis. Stat. § 66.0401(1m)(a-c).[1] This statute states:

> (1m) Authority to restrict systems limited. No political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission under s. 196.378 (4g) (b). No political subdivision may place any restriction, either directly or in effect, on the installation or use of a solar energy system, as defined in s. 13.48 (2) (h) 1. g., or a wind energy system, unless the restriction satisfies one of the following conditions:
>
> (a) Serves to preserve or protect the public health or safety.[2]
>
> (b) Does not significantly increase the cost of the system or significantly decrease its efficiency.
>
> (c) Allows for an alternative system of comparable cost and efficiency.

*Id*.

Wisconsin Courts have considered Wis. Stat. § 66.0401(1m) and reinforced its limits on local control. Local authorities are bound to these statutory restrictions when considering an application for a permit. *State ex rel. Numrich v. City of Mequon*, 626 N.W.2d 366, 2001 WI App 88. When reviewing that permit, a "case-by-case approach" to solar energy is required and not widespread or broad tactic. *Ecker Brothers v. Calumet County*, 772 N.W.2d 240, 321 Wis.2d 51 (Ct. App. 2009).

[1] Wis. Stat. § 66.0401 considers both solar and wind energy.
[2] Note, the preservation or protection of "welfare" was not included within these restrictions which is found within Wis. Stat. § 59.69(1).

The *Ecker Brothers* court also discussed the limited authority counties have, with that authority being insufficient to make legislative policy under Wis. Stat. § 66.0401(1m)(a-c). *Id*. at 18-21.

Next looking at the permit process, under the current law, small scale solar energy projects are subject to County review through the conditional use process subject to Wis. Stats. §§ 66.0401(1m) and 59.69(5e). Conditional use permits (CUPs) are reviewed by the Planning and Zoning Committee. "If an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the county ordinance or those imposed by the county zoning board, the county shall grant the conditional use permit." Wis. Stat. § 59.69(5e). "Any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence." *Id*. State law further provides, **"**As part of its approval process for granting a conditional use permit under this section, a county may not impose on a permit applicant a requirement **that is expressly preempted by federal or state law**." Wis. Stat. § 59.69(2)(bs) (emphasis added). In other words, Wis. Stat. § 66.0401(1m) applies when a small-scale solar energy project developer seeks a CUP, with its conditions measured by both Wis. Stats. §§ 66.0401(1m) and Wis. Stat. § 59.69; and the application may not be denied if there is agreement to or satisfaction of the legally imposed requirements and not without substantial evidence supporting the denial.

Solar energy is contemplated by the Columbia County Ordinance through both permitting and conditional use permitting processes. Per Columbia County Ordinance §§ 12.105.01, 12.105.02, and 12.125.27, electric transmission and utilities, such as small-scale solar energy projects, are permissible in agriculturally zoned land, including residential areas; and by Columbia County Ordinance § 12.115.02, on commercially, including highway interchange, and industrially zoned land.

While the above largely focuses on conditional use permits, the consideration of other permits possibly issued by the County would still be subject to Wis. Stat. § 66.0401(1m).

**III. Solar Energy Moratorium in Columbia County**

Columbia County does not have the legal authority to adopt a moratorium on solar energy in the County.

A "moratorium" is defined as a "legally authorized period of delay in the performance of a legal obligation," or a "suspension of activity" by Merriam-Webster. *See* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/moratorium.

The motion for the moratorium includes two interwoven issues to be halted through the moratorium itself, namely those regarding (1) solar energy facilities or projects generally and (2) then their battery storage facilities.

As discussed herein, review and permitting of large-scale solar projects are controlled by the PSC. While various steps, such as providing public input to the PSC, may be performed by counties, the County has no jurisdiction over these types of projects, including over whether to delay or to stop their existence in the County. State law then prevents any locally-derived moratorium.

There is also no legal authority for a moratorium on small-scale solar energy projects in Columbia County. Small-scale projects are limited by the restrictions within Wis. Stat. § 66.0401(1m). No political subdivision, such as Columbia County, may impose "any restriction, either directly or in effect on the installation of solar energy…" unless one of the conditions within (1m)(a-c) is satisfied. Wis. Stat. § 66.0401(1m)(a-c).

The three criteria in Wis. Stat. § 66.0401 (1m)(a-c) must be reviewed individually, through the conditional use permit (CUP) process for example, and not by an universal prohibition such as a moratorium or ordinance. In the past, a moratorium was in fact utilized by another Wisconsin county and an ordinance adopted. *See* Ecker Brothers v. Calumet County, 772 N.W.2d 240, 321 Wis.2d 51 (Wis. Ct. App. 2009). Finding that Calumet County had exceeded its legal authority, the Court of Appeals clarified that counties do not have the ability to legislate, unless by grant of authority and found against the county. More specifically, this court held:

> We are unconvinced that just because the legislature provided for three conditions under which political subdivisions can restrict a wind energy system, that it granted political subdivisions the authority to determine *as a matter of legislative fact* a "cart before the horse" method of local control. Instead, the language of WIS. STAT. § 66.0401(1) indicates that political subdivisions must rely on the facts of an individual situation to make case-by-case restrictions. We initially point out that § 66.0401(1) refers to local restrictions placed on *a* wind energy system. The statute's limit on local control does not refer to *any* wind energy system nor to wind energy *systems.*
>
> The focus on the term "*a* system" is also evident from the character of the three conditions, which, though stated in qualitative terms, require political subdivisions to make quantitative determinations. What is needed to protect public health depends on the facts of a particular situation, just as whether a restriction will increase costs, decrease efficiency, or prevent an alternative system from being constructed. When a political subdivision creates restrictions without sufficiently developed facts about *a* particular wind energy system, it is impossible for it to determine if its ordinance is in conflict with the statute. We therefore conclude that WIS. STAT. § 66.0401(1) requires a case-by-case approach, such as a conditional use permit

> procedure, and does not allow political subdivisions to find legislative facts or make policy. The conditions listed in § 66.0401(1)(a)-(c) are the standards circumscribing the power of political subdivisions, not openings for them to make policy that is contrary to the State's expressed policy.

Ecker, ¶ 20-21. As a result of *Ecker*, the ***only*** proper function a county may perform under Wis. Stat. § 66.0401(lm) is to review each small-scale project individually through a case-by-case process such as through a CUP. A moratorium stopping all solar projects is a direct and widespread restriction prohibited by Wis. Stat. § 66.0401(lm); and to the degree that three factors under (1m)(a-c) may be even considered, a moratorium outright avoids the case-by-case analysis *Ecker* required.

Turning to the second issue of battery storage, this issue is directly tied to solar energy regulation. Therefore, this, too, cannot avoid the application of Wis. Stats. §§ 196.491, 66.0401, or 59.69 or Wisconsin caselaw. In summary, larger solar projects, including their battery storage, are within the PSC's jurisdiction. A solar project of this size would not have to follow an ordinance attempting to restrict or inhibit battery storage. *See* Wis. Stat. § 196.491(4)(c)3. and *American Transmission v. Dane County*, 2008 WI AP 2604. Wis. Stat. § 66.0401(1m) still applies to small scale solar projects, requiring the statutory criteria to be met, using the appropriate evidentiary burden, and applied on a case-by-case basis by the local governmental authority. *See Ecker Brothers v. Calumet County*, 772 N.W.2d 240, 321 Wis.2d 51 (Ct. App. 2009).[3] Attempting to regulate a battery storage system is an indirect regulation prohibited by Wis. Stat. § 66.0401(1m). Even to the extent that a factor under Wis. Stat. § 66.0401 (1m)(a-c) could be met, an universal moratorium is prohibited as it avoids the required individual analysis. Dependent on the issue, a host of Federal and State law and various governmental agencies may have jurisdiction over issues such as batteries, waste, point and nonpoint source water run-off, environmental concerns, etc. which may once again preempt any local regulation.[4]

Regardless of whether the focus is one battery storage or solar energy facilities, the contemplated moratorium is not rooted in Wisconsin law. The motion itself was insufficient - it lacked any reference to or grounding in State law as its authority allowing for the contemplated moratorium.

---

[3] The very discussion on holding a moratorium on solar projects as contemplated may be interpreted as creating a record demonstrating the County's intent to not comply with *Ecker Brothers* or State law. This, too, is concerning.

[4] For many reasons, the County has never regulated batteries. Ignoring the nature and the volume of the above-stated concerns and the reasons why the County has not gotten involved in this area previously, proceeding with any battery storage regulation may require new staff to be hired as current staff neither have the applicable expertise or the related tasks as their job duties. This position would then result in additional costs to be accrued which were not part of the annual budgetary process.

Both by reference and through related board discussion, this moratorium involves permits issued by the Planning and Zoning Department. Given this, it may have been intended to have been made pursuant to Wis. Stat. § 66.1002, which is regarding comprehensive planning and development moratoriums. Should that be the case, such a moratorium would be legally prohibited. First, Wis. Stat.§ 66.1002 expressly limits its applicability to only cities, villages, and towns. *See* Wis. Stat. § 66.1002(1)(d) and (2). This statute does not apply to counties whatsoever. This statute also requires an ordinance; there is no ordinance drafted at this time. *See* Wis. Stat. § 66.1002(3). That ordinance is also required to provide certain things and to be publicly available for review at the time notice is given, with information on how to find that. *Id*. None of that has occurred. Likewise, a solar energy moratorium is not even a stated basis for a moratorium under Wis. Stat. § 66.1002(4).

Furthermore, Wis. Stat. § 59.69, which provides Wisconsin counties with their direct statutory authority to plan and zone, expressly prohibits development moratoriums. Per Wis. Stat. § 59.69(4), "The **board may not enact a development moratorium**, as defined in s. 66.1002 (1) (b), under this section or s. 59.03, by acting under ch. 236, or by acting under any other law, except that this prohibition does not limit any authority of the board to impose a moratorium that is not a development moratorium."[5] *Id*. (emphasis added).

No reference to any other law was directly or indirectly made on March 15th through this motion. Nonetheless, a review of Wisconsin law was performed for other possible grounds for this moratorium. No legal basis to support this solar moratorium could be identified within Wisconsin law.

Whether intended to be as a development moratorium or otherwise, holding a moratorium as contemplated is not allowed. It goes against any case-by-case analysis required for each small-scale solar energy project and would overall exceed the County's authority regardless of the project's size.

**IV. Costs to Columbia County**

Because of the consistent failure to utilize County Department expertise and input, significant costs to the County have directly accrued involving this subject matter since September. It is also reasonably foreseeable that those costs will continue to accrue if this current practice continues.

[5] Reflecting State law, the Columbia County Ordinance, Chapter 12 also provides no authority to hold a solar energy moratorium.

### A. Review of County Resources

While multiple other departments may be impacted by solar projects in Columbia County, two departments have been more involved two date. Those being the Corporation Counsel Office and the Planning and Zoning Department.

The Planning and Zoning Department acquires its authority through Wis. Stat. § 59.69. Its role and scope of duties is more fully described within Columbia County Ordinance ch. 12. Pursuant to Columbia County Ordinance § 12.150.02, the Planning and Zoning Administrator has the responsibility to interpret and apply this chapter when considering comprehensive planning, conditional use permits, and other permits. *Id*. By the duties and responsibilities set forth within County Ordinance, this Department possesses the required expertise to review these types of issues.

Columbia County Corporation Counsel Office represents the County itself and the interests of the public dependent on the matter. The duties of Corporation Counsel are provided by statute and detailed within Columbia County Code of Ordinance. *See* Wis. Stat. § 59.42 and Columbia County Code of Ordinance §§ 8.301-8.303.

Historically, County supervisors have requested Corporation Counsel's opinion when there was a legal issue needing to be resolved as well as whether there was a concern about County liability. This practice has been memorialized into Columbia County Ordinance, which provides,

> The Corporation Counsel shall, when requested, provide advice to the County Board or any commission, committee, departments, agencies or officers of the County, in all civil matters in which the County, the County Board, or any commission, committee or officer thereof is interested or relating to the discharge of official duties of such departments, boards, commissions, committees, agencies or officers and examines all claims against the County for officers, interpreters, witnesses, and jurors fees and costs in civil actions and examinations when presented to the Board of Supervisors and reports, in writing thereto, as to the potential liability of the County for any and all claims of whatever nature files against it; and acts as legislative counsel for the Board of Supervisors when so authorized. The Corporation Counsel shall hire outside counsel for the execution of these duties only when deemed necessary.

Columbia County Code of Ordinance § 8.302(1)(b).

By State law as well as County Ordinance, the two departments are available to be utilized in a manner reflective of their duties.

**B. Applicable Actions**

Despite the availability of County staff and expertise, a review of the County's records demonstrates that much of what has occurred has been without any utilization or attempt to utilize such resources.

**C. Resolutions Drafted**

Seven resolutions have been drafted involving solar energy to date.

Regarding the first two, after an informational presentation in September on the law and solar energy by Corporation Counsel staff to the Agriculture, Extension, Land and Water Conservation Committee, the first two resolutions were presented by Supervisor Groves. Those resolutions were not publicly noticed on the agenda; their existence unknown to County staff until introduced, including those responsible for the agenda. No vote was taken on those resolutions. Also, at this September's meeting, Corporation Counsel staff then advised that the proper forums to modify Wisconsin law and to discuss the solar related concerns were before the PSC and the Wisconsin Legislature. For further information, *see* the September 12, 2022, Agriculture, Extension, Land and Water Conservation Committee meeting.

The third resolution was presented by Supervisor Groves directly to the full County Board in November. Meeting the deadline for notice, he had shared his draft resolution with the County Clerk and Corporation Counsel Office the Wednesday before the next County Board meeting that following Tuesday. However, again, no request for review was made prior to or with his submission; and like before, multiple issues were present with its form, its content, and the practice followed. At that full board meeting, this resolution was then sent to the Planning and Zoning Committee for its consideration. It was later denied by that Committee.

A fourth resolution was drafted by Supervisor Brusveen, who chairs the Planning and Zoning Committee, and passed by the full County Board in December 2022 requesting an environmental assessment to be performed on the High Noon Solar project. *See* County Board minutes, December 21, 2022. This was not contemplated until after the regular Planning and Zoning Committee meeting was held, so this resolution required a special Planning and Zoning Committee meeting to be held right before the full board meeting on December 21st. Again, little time for staff review or assistance was provided.

The fifth resolution, one to the Wisconsin legislature requesting changes in State law, was requested to be drafted by Corporation Counsel by the Planning and Zoning Committee at the December 2022. The draft resolution was presented to that Committee and was later denied by it in January 2023.

The sixth was drafted by and then presented by Supervisor Brusveen in February 2023. That Committee met on February 7th. On February 6th, Supervisor Brusveen shared with that Committee her proposed resolution for their consideration with an updated version sent the morning of the 7th. Again, no request for staff review was made prior to this submission.

At that same February meeting, Corporation Counsel staff asked that the supervisors share with that office any proposed draft resolutions as soon as possible rather than waiting to the time of publication.

Pursuant to Columbia County Board of Supervisors Standing Rule 1(9), committee chairs establish the agendas for their applicable standing committees. Upon the inquiry of Planning and Zoning staff about the March 2023 agenda, Supervisor Brusveen shared two proposed resolutions, one to the State legislature and one to the PSC, on Monday, February 27th, to be publicly noticed on Thursday, March 2nd. The one to the PSC was the same as that presented on February 7th; the one to the State legislature was new and is the seventh resolution proposed to date. This resolution requested the removal of portions within State law, including Wis. Stat. § 66.401(1m). Corporation Counsel submitted a response back on March 1st with additional clarification and direction on the drafting of resolutions. However, no substantive changes were made to either resolution.

At the March 7th Planning and Zoning meeting and regarding the seventh resolution, outside counsel pointed out that the omission of red-lined statutory language could result in the removal of any local control within Wis. Stat. § 66.0401(1m) - in other words, that the drafted resolution had the opposite effect and meaning of what was being raised as a concern by solar opponents. Without proposed replacement language, it could be easily interpreted that the County was requesting that the current local regulatory authority under Wis. Stat. § 66.0401(1m)(a-c) be removed, leaving the County with ***no*** authority if ever adopted by the Wisconsin Legislature. No amendment was made to the seventh resolution despite the provision of this advice. Both resolutions were reviewed by and approved of by this Committee.

At the March 15th County Board meeting, no request for advice was made regarding either resolution. One supervisor, Supervisor Carr, raised the same issue Attorney Curtis had earlier presented about the elimination of local control in the proposed resolution. Her point was too ignored. Both resolutions[6] were ultimately approved of by the County Board without any amendment.

Later, at that meeting on March 15th, Supervisor Kohlberg also moved to hold a public hearing on the issue of a moratorium on solar energy in Columbia County. No attempt was made to consult with Corporation Counsel or Planning and Zoning staff about the legality or validity of that motion prior to making it.

At the time of drafting this memo, a public hearing has been scheduled to consider a solar energy moratorium for the morning of April 18th.

**D. Other Actions**

Despite the foregoing actions, County staff and outside counsel has provided various County committees and the full Board technical and legal information on solar energy, Wisconsin law, Columbia County Code of Ordinance, related processes, and issues like preemption on numerous occasions. At minimum, information has been shared at the seven times identified below:

1) September 12, 2022: Agriculture, Extension, Land and Water Conservation Committee meeting. *See* the approved Minutes, item 11.
2) November 15, 2022: Full County Board Meeting, which included a presentation by Attorney Curtis. *See* the approved Minutes, page 9.
3) December 6, 202: Planning and Zoning Committee. *See* the approved Minutes; multiple references throughout.
4) January 3, 2023: Planning and Zoning Committee. See approved Minutes, page 2.
5) February 2, 2023: For their review, through an email from Corporation Counsel staff to Planning and Zoning Committee members on February 2nd containing memorandum drafted by Atty. Curtis and the link to the February's Wisconsin Counties Association edition on this subject.

[6] This sixth resolution, which was to the PSC, was also submitted after the expiration of the project's defined public comment period. *See* Scheduling Order, Document # 45170, dated November 4, 2022. Various staff and supervisors did raise this as an issue.

6) February 7, 2023: Planning and Zoning Committee. *See* the approved Minutes, pages 3, 4, 9-11.
7) March 7, 2023. Planning and Zoning Committee as described herein; those Draft Minutes not yet approved.

Individual communications with supervisors are not included above. The above also does not consider current or future actions.

**E. Cost to County Residents**

The failure to utilize and recognize staff expertise has already cost County taxpayers. If this continues, County taxpayers will continue to bear the financial burden.

**i. Resulting Costs**

Since last fall, sizeable costs have already accrued directly related to this matter.

Numerous staff hours have been spent on the issue of solar energy and the actions described herein. Note:

a. Seven resolutions have been drafted on this; six without consultation or heed to it. Several resolutions have not complied with the Open Meetings law requirements on public notice; multiple have disregarded the plain language of Wisconsin law as to content and process; and some have failed to meet the Columbia County Board of Supervisors Standing Rules regarding process, form, content, fiscal consideration, and timely sharing with other supervisors. This has also created an unusual situation where County staff has frequently received the resolutions very late in the process - at times only after select members of the public have already received and reviewed them.

b. At least nine (9) County meetings have considered solar energy in some form - each with multiple staff members present.

c. Outside counsel Attorney Curtis was requested to review and assist with handling this issue in October 2022. He has attended multiple meetings, presented to the full board in November, engaged in multiple communications, and drafted legal guidance on the

matter. As private counsel hired by and for the County, his time and efforts have also resulted in additional costs to the County.

d. Various contradictory actions have been taken to date - all somehow requiring staff time. For example, in February, the Planning and Zoning Committee voted to have public meetings with solar energy developers and to consider a joint development agreement, with the informational meeting moved for by Supervisor Kohlberg and seconded by Supervisor Brusveen. *See* February 6, 2023, Planning and Zoning Committee minutes, pages 3 - 4. Despite the motion omitting any direction on how that would be accomplished, Corporation Counsel staff worked to schedule the informational meeting with three different organizations and at least fifteen separate calendars. Then the same moving supervisor from the February Planning and Zoning committee successfully moved to hold a public hearing on a solar energy moratorium at the full County Board meeting, thereby, negating his own and his committee's previous motions in February.

   This type of action was also seen in March. At the Planning and Zoning Committee, regarding agenda item 11 (Request State to Revise Solar Energy Law), the resolution requested that portions of Wis. Stat. § 66.0401(1m) to be removed without any replacement language. Atty. Curtis raised that, without additional guiding language included and if adopted by the legislature, this omission could result in the elimination of the already limited county ability to regulate this issue. Nonetheless, that Committee made no amendment and approved the resolution. This same issue was raised by Supervisor Carr at the County Board and yet the resolution was passed.

   In January, the Planning and Zoning Committee developed a list of twenty-seven issues to be considered for solar project developments. In February, a decision was made to consider a joint development agreement using this list. However, since then, that has been suspended due to the public hearing on a moratorium.

   As stated, outside counsel was hired to provide additional review and expertise on this matter for the benefit of Columbia County at large. Despite being a direct factor

in the acquisition of his services, the same solar energy opponents on the County Board have since questioned the outside counsel costs, which include his fees. They then voted against paying those costs in March 2023. The approval to pay those costs did ultimately pass.

Those solar energy opponents on the County Board have consistently raised concerns about diminishing land and water quality resulting from solar energy facilities. However, solar energy opponents on the County Board voted in February to not approve but to table until later in the year a regular job replacement request a Land and Water Resource Management Specialist with a nutrient planning emphasis. This position is a budgeted position, and the request was made after the previous employee had taken a job elsewhere. This position is primarily responsible for the implementation and supervision of manure management plans, the supervision of all fertilizer applications, evaluating soil and water run-off and quality, and implementing the Farmland Preservation Program. This position is unfilled; those job responsibilities now are not being met. Of importance, the same supervising staff member who made this request is the director of both the Planning and Zoning and the Land & Water Conservation Departments. *See* the Agricultural, Extension, Land & Water Conservation Committee Minutes, February 6, 2023, page 2, item # 8.

e. As indicated above, County staff and outside counsel have provided technical and legal information on many occasions.

Any additional work performed on this issue will have a cost to it, including drafting legal memoranda like this or attending future meetings.

**ii. Future Legal Costs:**

If the County continues to act without or against staff advice, counsel, and input, it will invite litigation in some form, thereby, making the accrual of significant additional costs a likelihood.

First, this contemplated moratorium on solar energy is prohibited by State law. Should any additional direct or related action be taken because of it, the County should expect that there will be those who will seek to enforce State law. In those enforcement actions, the County will accrue its own legal expenses as well as possibly those of the plaintiff. For example, if done through a

mandamus action, Wis. Stat. § 783.04 provides that the plaintiff may recover both damages and costs. If commenced through a declaratory judgment action, Wis. Stat. § 806.01(10) allows for the court to award costs as are just and equitable.

Second, additional legal costs are probable in the County's consideration of small scale solar energy projects. As previously discussed, small scale solar energy projects are subject to County review through the conditional use process subject to Wis. Stats. §§ 66.0401(1m) and 59.69(5e). Both the statutory framework and evidential burdens will dictate the ability to regulate generally, the scope of that regulation, and then the evidentiary weight that must be met when decision making. The result of these leave only very limited County regulatory authority over a properly completed CUP application.

The Planning and Zoning Committee has decision-making authority over CUPs in the County. This Committee is comprised of five members. To date, two of the five have publicly taken positions against solar energy. A brief review of County records demonstrates that one Planning and Zoning Committee member moved for this solar energy moratorium and the Committee's chair has drafted three resolutions on solar energy to date, including one to shut down a currently pending solar project in the County. These actions make it very uncertain whether a reasonable and fair analysis will be performed by this Committee on a small-scale solar project application for a CUP before it. While the three remaining members may be able to perform this duty, that unfairly requires them to never be sick, have a doctor's appointment, go on a vacation, etc.

Denials of CUPs are appealable to the Board of Adjustment (BOA). Corporation Counsel cannot provide both legal advice to the Planning and Zoning Department and to the BOA at this stage, as that would be providing advice to both a party and the overseeing committee with decision-making authority. To prevent that conflict of interest, two attorneys from two different offices would be required then to represent each entity. Potentially, this could be rectified later, if the BOA is appealed and dependent on the decision made by the BOA. However, appeals of the BOA decisions are also subject to circuit court review (and potentially appellate review), which would result in the accrual of more legal fees.

Other legal costs may also accumulate.

If the County Board proceeds with an action that there is no legal basis for and such was advised by Corporation Counsel and the County is then sued, the County's insurance policy will not cover those legal expenses. They will then need to be paid by the County directly.

Corporation Counsel's client is Columbia County itself. There is no duty to represent supervisors in actions where they have been advised against taking but they nonetheless proceed and are then individually sued. Should those arise, those supervisors will be responsible for hiring their own legal counsel. Additionally, if the County chooses to take a legal position without legal merit and against the advice of counsel, Corporation Counsel attorneys will be unable to provide or pursue a meritless defense or action. This is not because County staff do not wish to defend or pursue a reasonable claim or action; this is specifically because **all** attorneys are prohibited from pursuing meritless claims and defenses. *See* Wisconsin Supreme Court Rule 20:3.1.

**iii. Staff Costs**

Despite their neutrality, the County staff's attempts to provide guidance on content, process and law has been met with blatant hostility by some involved; where disagreement on content, process, and law has been incorrectly interpreted as disagreement on subject matter. Any construed disagreement has then made that staff person a target. Throughout the course of this, those County staff have then publicly and privately faced harassment, bullying, false accusations of corruption and incompetence, and indirect and direct threats to their employment because of performing their duties.

As a result of this conduct, loss of long-term staff is a very foreseeable consequence. Likewise, junior staff are aware of the treatment received, providing little incentive to want to promote internally or to otherwise stay with the County. A simple Google search by future candidates may, too, yield direct or indirect references to this matter; thereby, preventing those candidates from applying for applicable open positions within the County.

Many of these staff have positions where statutory duties comprise their normal work. As those duties are dictated by law, the failure to perform them as provided may become a legal issue. At this time, those staff members have spent considerable time on solar energy related matters to date, already drawing them away from their regular, legally defined, and expected job duties. This alone is problematic. Should these positions later go unfilled, are not timely filed, or as referenced, continue to go unfilled, those duties will not be met, and additional legal issues may very well arise.

Because of the treatment they have received, those staff most involved may also pursue their own legal actions, such as filing grievances internally or externally through other employment law actions, against those perpetuating or furthering such a work environment.

Accrual of additional recruitment, training, and defense costs are all possible in the future.

**IV. Conclusion**

Within Columbia County government, solar energy has been a substantial topic of discussion since at least September 2022. Wisconsin law on this issue, other legal topics such as preemption, and the County's ability to regulate solar projects have been thoroughly and repeatedly discussed. Yet, motions like having a moratorium on solar energy, battery storage, and Planning and Zoning permits continue to occur. These types of actions demonstrate two things: (1) a profound lack of understanding of the law generally and specifically, including the authority Wisconsin counties possess and their role within State government, and (2) a direct and purposeful unwillingness to utilize County resources to the benefit of County residents. If this practice remains unchanged into the future, County residents will bear the consequences - both those who support solar and those who are against it - either by the repeated and ineffective actions taken or by the continued accrual of those related and unnecessarily caused costs and expenses.