

IN THE SPENCER CIRCUIT COURT
CAUSE NO. 74C01 [REDACTED]

Intervenors.

“Intervenors”), by counsel, pursuant to Ind. Trial Rule 24(A), respectfully move the Court to intervene in the above-captioned case, as a matter of right and, in support, states as follows:



1. This case involves Petitioners' attempt to develop a utility-scale solar project (the "Proposed Solar Project") on real property located in Spencer County, Indiana.

2. The Complaint alleges claims seeking to force the approval of an Improvement Location Permit ("ILP") for the Proposed Solar Project and seeks judicial review of the Town BZA Hearing relating to the Proposed Solar Project. This Court entered a Preliminary Injunction on some of the claims in the lawsuit, which Preliminary Injunction was reflected on the Court's Chronological Case Summary ("CCS") on October 9, 2023. The judicial review count remains pending.

3. Each of the Intervenor's owns real property and/or resides in Spencer County in proximity to property being utilized with the Proposed Solar Project, and each of the Intervenor's property values will be negatively impacted by the project, in addition to other negative impacts. All of the acreage on the opposite side of 500N and Finch Hill Roads (with respect to the properties noted below) will contain solar panels from the Proposed Solar Project. The Fulkersons' property is directly across a narrow two-lane county road on two sides by fields that could be containing solar panels. Lester Purviance's property is 1,360 feet from a property that could be filled with solar panels and 1,408 feet from another property that could be filled with solar panels. The balance of the Intervenor's properties will be (or could be) touched by as little as one, or as many as four, sides by a field containing solar panels in connection with the Proposed Solar Project.

4. Each of the Intervenor's has a direct stake in the outcome of this lawsuit, and their properties are more particularly described as follows:

- a. [REDACTED], Grandview Indiana
- b. [REDACTED], Grandview Indiana,
- c. [REDACTED], Grandview Indiana, 47615
- d. [REDACTED], Grandview Indiana, 47615
- e. [REDACTED], Grandview Indiana, 47615
(with a mailing address of [REDACTED], Grandview Indiana, 47615)

- f. [REDACTED] Grandview Indiana, 47615 (with a mailing address of [REDACTED] Grandview Indiana, 47615)
- g. [REDACTED], Grandview Indiana, 47615
- h. [REDACTED], Grandview Indiana, 47615
- i. [REDACTED], Grandview Indiana, 47615
- j. [REDACTED], Grandview Indiana, 47615
- k. [REDACTED], Grandview Indiana, 47615
- l. [REDACTED], Grandview Indiana, 47615
- m. [REDACTED], Grandview Indiana, 47615
- n. [REDACTED], Grandview Indiana, 47615

5. [REDACTED]

[REDACTED] appeared and spoke against the Proposed Solar Project at the Town BZA hearing that is the subject of the judicial review proceeding.

6. The Intervenors have an interest in the property and transaction that is the subject of the pending litigation. Indeed, the Intervenors are among the individuals referenced in paragraph 38 of the Complaint as the “vocal, anti-solar project opponents”.

7. The Intervenors are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect their interest in the zoning decisions relating to the Proposed Solar Project. Indeed, this Court’s Preliminary Injunction Order directs the issuance of the ILP for the Proposed Solar Project which project, as noted above, will cause harm to Intervenors and their properties.

8. The Intervenors’ interests are divergent from those interests of the original listed Defendants and may not be adequately protected by the original Defendants’ representation. The harm to be suffered by the Intervenors is unique to them and their properties, as is their motivation to defend those interests. Moreover, it is the Intervenors’ intention to appeal the Preliminary Injunction Order, and they have no indication that the original Defendants intend to do so, and calls seeking to confirm the same have not been returned.

9. With respect to a potential appeal, the Intervenor would note that the Town BZA has no jurisdiction or authority over the 2-mile fringe area (the “Fringe Area”). The legal issue is not necessarily one of subject matter jurisdiction, but whether the decisions involving the Fringe Area are *ultra vires*. If a zoning board acts in excess of the power granted under the statutes and zoning ordinance, those acts are *ultra vires* and void. See *Elkhart County Bd. of Zoning Appeals v. Earthmovers, Inc.*, 631 N.E.2d 927, 929 (Ind. Ct. App. 1994). Because such acts are void, there can be no waiver due to an alleged failure to appeal proper zoning decisions, and those decisions cannot form the basis of injunctive relief. *Id.* They are void and can be the subject of collateral attack at any time.

10. When ruling on this Motion to Intervene, all facts alleged in the motion must be accepted as true. *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 812 (Ind. 2012).

11. Indiana Appellate Rule 14 provides that interlocutory appeals granting preliminary injunctions are to be taken by filing a Notice of Appeal within 30 days after the notation of the decision on the CCS. In this instance, that deadline is November 8, 2023. Trial Rule 24(C) allows for intervention after judgment for purposes of appeal.

12. Intervenor request the entry of an Order granting this Motion to allow them to participate in the remaining issues in this case and for the purpose of appealing the Preliminary Injunction Order.

13. *Intervenor further request a prompt ruling on this Motion to Intervene so they may timely file their Notice of Appeal.*

WHEREFORE, Intervenor, by counsel, respectfully move the Court for an Order allowing them to intervene in this proceeding as of right, and granting all other just and proper relief.

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& KUCHMAY LLP

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

/s/ Jason M. Kuchmay
Jason M. Kuchmay