

CAUSE NO. 1:03-cv-0100-BE

GRANDVIEW SOLAR PROJECT LLC, TOWN OF GRANDVIEW,  
INDIANA BOARD OF ZONING APPEALS, TOWN OF  
GRANDVIEW, INDIANA TOWN COUNCIL, and TOWN OF  
GRANDVIEW, INDIANA ZONING ADMINISTRATOR,  
Defendants.

**VERIFIED  
COMPLAINT FOR  
DECLARATORY  
JUDGMENT AND  
INJUNCTIVE  
RELIEF**



3. Plaintiff, [REDACTED] is an individual with a principal place of residence and mailing address of [REDACTED], Grandview Indiana 47615.

4. Plaintiff, [REDACTED] is an individual with a principal place of residence and mailing address of [REDACTED] Grandview Indiana, 47615.

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34. [REDACTED] is an individual with a principal place of residence and mailing address of [REDACTED] Main Street, Grandview Indiana, 47615.

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79. Plaintiff, [REDACTED]

80. Grandview Solar Project LLC ("GSP") is a Delaware limited liability company with a principal address of 1101 Connecticut Avenue NW, Second Floor, Washington, DC 20036.

81. The Town is a municipal corporation and/or otherwise a unit of government located in the State of Indiana at 316 Main St., Grandview, Indiana 47615.

82. Town BZA is a zoning board located at 316 Main St., Grandview, Indiana 47615.

83. The Town Council a fiscal legislative body located at 316 Main St., Grandview, Indiana 47615.

84. The (acting) Town Zoning Administrator, Sam Rose, is the Zoning Administrator of the Town of Grandview, and is located at 316 Main St., Grandview, Indiana 47615.

85. GSP seeks to develop a commercial solar project (the “Project”) in Spencer County, Indiana, a portion of which is proposed to be located in the Town.

86. Each of the Plaintiffs owns real property and/or resides within 3 miles of the proposed Project.

87. GSP contends that the Project was previously owned and developed by Orion Renewable Energy, which Project would mostly be constructed outside of the Town’s limits.

88. GSP contends that Spencer County directed the Project to seek zoning approval from the Town because a portion of the Project would be constructed within the Town’s two-mile extraterritorial jurisdiction (“ETJ”).

89. GSP contends that the Town and Spencer County each confirmed that the Town had an ETJ and that the Town would be the proper entity to decide matters concerning the ETJ.

90. GSP contends that the Town BZA approved a special exception for the Project in December 2019 (the “Special Exception Approval”).

91. GSP contends that after the Special Exception Approval, the Project expanded its footprint beyond the area in the Town’s ETJ.

92. GSP contends that it then sought a contingent use approval from Spencer County on the premise that the expanded Project was in the County's jurisdiction.

93. GSP claims that on September 24, 2020, the Spencer County BZA approved the contingent use (the "Contingent Use Approval").

94. GSP claims that in 2022 it acquired the Project from Orion and that, based on the Special Exception Approval and Contingent Use Approval, all that remained from the Town before construction could proceed was the issuance of an ILP – a ministerial, non-discretionary act required by the Town Zoning Administrator.

95. GSP claims that following opposition, on June 23, 2023, it filed an Amended ILP Application (the "Application").

96. GSP claims that the Town BZA and the Town Council nonetheless voted against supporting the issuance of the ILP.

97. GSP claims that the Town Zoning Administrator refused to issue the ILP for the Project and, on July 31, 2023, GSP filed a lawsuit in the Knox Superior Court as Cause No. 42C01-2307-PL-000032 (the "GSP Lawsuit") seeking injunctive relief, judicial review, and a declaratory judgment, among other things. A true copy of the GSP Lawsuit (without exhibits) is attached as Exhibit "A".

98. Among the arguments in the GSP Lawsuit, GSP claims that because of the Special Exception Approval and Contingent Use Approval, all conditions precedent to the issuance of the requested ILP were met.

99. On August 31, 2023, venue for the GSP Lawsuit was transferred to Spencer County and the case was assigned Cause No. 74C01-23009-PL-000469.

100. On September 28, 2023, The Honorable Amy Steinkamp Miskimen, Special Judge for the Spencer Circuit Court issued Special Findings of Fact, Conclusions of Law, and Entry of Preliminary Injunction (the “Injunctive Relief Order”). A true copy of the Injunctive Relief Order is attached as Exhibit “B”.

101. Among the arguments raised by GSP and adopted by the court in the Injunctive Relief Order is the position that the Defendants’ claim that the Town BZA lacked jurisdiction over the property in the Project that is the subject of the Amended ILP Application lacked merit because the Town BZA knowingly asserted its authority over the ETJ land four years ago when it issued the special exception approval over the property at issue. Thus, it was argued and held that any argument concerning the Town BZA’s jurisdiction was waived in 2019.

102. After removing the jurisdiction argument, it was determined that the ILP should have been granted and the Town Zoning Administrator was ordered to issue the ILP.

103. Many of the Plaintiffs, as neighboring property owners directly impacted by the Project, filed a Motion to Intervene in the GSP Lawsuit on October 30, 2023, for the purpose of protecting their rights and pursuing an appeal of the Injunctive Relief Order. A true copy of the Motion to Intervene is attached as Exhibit “C”.

104. Regarding the jurisdiction / waiver argument upon which the Injunctive Relief Order is based, the Motion to Intervene stated:

With respect to a potential appeal, the Intervenors 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.

See Exhibit C, ¶9.

105. If the Town is unable to assert zoning jurisdiction over the ETJ land (or Fringe Area) there are no grounds to force the issuance of an ILP for the Project.

106. The original Defendants to the GSP Lawsuit filed an appeal of the Injunctive Relief Order.

107. While the Motion to Intervene was filed 2.5 months ago, the court has taken no action on the motion and, as such, the movants (which includes many of the Plaintiffs) are not parties to the GSP Lawsuit and cannot be heard in the GSP Lawsuit until they are parties.

108. On November 21, 2023, after the Motion to Intervene was fully briefed, the parties to the GSP Lawsuit were informed that the presiding Special Judge was granted an indefinite leave of absence “and the parties may wish to select a new Special Judge to be appointed by the Court.”

109. Subsequently, and while the Motion to Intervene was pending, GSP apparently reached a settlement with the Town and, on December 1, 2023, the parties (not including any of the Plaintiffs) filed a Stipulation of Dismissal.

110. The Stipulation of Dismissal has not been ruled upon and the GSP Lawsuit has not yet been dismissed.

111. The parties to the GSP Lawsuit have not filed any documents to further the appointment of a new Special Judge.

112. The proposed Intervenors are not presently parties to the GSP Lawsuit (due to the failure to rule on the Motion to Intervene) and cannot be heard to object to the settlement, the proposed dismissal, and to protect their interests.

## **COUNT I – DECLARATORY JUDGMENT**

113. Paragraphs 1 through 112 are incorporated herein.

114. A dispute exists between the parties regarding the ability of the Town to authorize the Project in the ETJ, to enter into a settlement authorizing the Project in the ETJ, and scope of the parties' rights and obligations as relates to the location of the Project in the ETJ.

115. In rendering a decision on this Count I of the Complaint, and based upon the facts, Plaintiffs request that the Court enter an Order declaring each of the items set forth in this paragraph below (collectively, the Declaratory Judgment Rulings”):

a. The Town cannot exercise zoning jurisdiction over the ETJ unless provided for in the Comprehensive Plan and an ordinance duly enacted by the Commissioners.

b. The Comprehensive Plan does not provide for the exercise of zoning jurisdiction by the Town over the ETJ.

c. The Commissioners have not enacted an ordinance providing for the exercise of zoning jurisdiction by the Town over the ETJ.

d. Town lacks zoning jurisdiction over the ETJ.

e. The Town cannot exercise zoning jurisdiction over the ETJ unless and until a Comprehensive Plan and ordinance are properly adopted providing for same.

f. The Town cannot approve the Project in the ETJ unless and until a Comprehensive Plan and ordinance are properly adopted granting the Town authority to exercise zoning authority in the ETJ.

g. The Special Exception Approval and the Contingent Use Approval are void ab initio.

h. The Town cannot enter into a settlement that avoids the statutory mandate regarding ETJ, and any settlement with the Town cannot create zoning jurisdiction where none exists otherwise.

i. The Settlement Agreement is in contravention of statutory and zoning authority

j. The Settlement Agreement is void.

116. A decision confirming the Declaratory Judgment Rulings would terminate the controversy between and among the parties as to those issues.

**WHEREFORE**, Plaintiffs, by counsel, respectfully request that the Court enter judgment in their favor, and against the Defendants, declaring all of the items included in the Declaratory Judgment Rulings, and providing all other just and proper relief.

## **COUNT II – INJUNCTIVE RELIEF**

117. Paragraphs 1 through 116 are incorporated herein.

118. Defendants' actions, if not enjoined, will circumvent Indiana law and create zoning authority over ETJ where none exists.

119. The result will be the development of a commercial solar development in the immediate vicinity of Plaintiffs' properties.

120. Plaintiffs contend that the development of the Project will negatively impact their property values, and otherwise cause harm to them and their real estate. Among the potential harm is the destruction of Plaintiffs' views and the rural nature of the area where they chose to live, drainage and other environmental harm, and negative impacts to quality of life.

121. Plaintiffs are entitled to a temporary restraining order, as well as a preliminary and permanent injunction enjoining the Defendants from entering into, or effectuating the terms of, the Settlement Agreement (to include securing the dismissal of the GSP Lawsuit) until such time as Plaintiffs' interests are protected, and until such time as the Town is legally able to exercise zoning jurisdiction over the ETJ.

122. Plaintiffs are entitled to a temporary restraining order, as well as a preliminary and permanent injunction requiring the Defendants to withdraw the Stipulation of Dismissal filed in the GSP Lawsuit.

123. Defendants' actions have caused and will continue to cause substantial, immediate, and irreparable injury and loss for which Plaintiffs have no adequate remedy at law.

**WHEREFORE**, Plaintiffs, by counsel, request the entry of injunctive relief, as provided above, and all other just and proper relief.

WE SOLEMNLY SWEAR OR AFFIRM, UNDER PENALTIES FOR PERJURY, THAT  
THE ABOVE FACTUAL ALLEGATIONS ARE TRUE TO THE BEST OF OUR  
KNOWLEDGE AND BELIEF.

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Respectfully submitted,

SNYDER MORGAN & KUCHMAY LLP

/s/ Jason M. Kuchmay

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