

STATE OF INDIANA)
) SS:
COUNTY OF KNOX) CAUSE NO.: 42__-2307-PL-_____

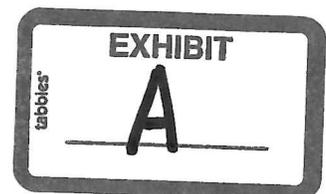
GRANDVIEW SOLAR PROJECT LLC,) 42C01-2307-PL-000032
)
) Plaintiff,)
)
) vs.)
)
) TOWN OF GRANDVIEW, INDIANA,)
) TOWN OF GRANDVIEW, INDIANA BOARD)
) OF ZONING APPEALS, TOWN OF)
) GRANDVIEW, INDIANA TOWN COUNCIL,)
) and TOWN OF GRANDVIEW, INDIANA)
) ZONING ADMINISTRATOR,)
)
) Defendants.)

**VERIFIED COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTION, PETITION FOR JUDICIAL REVIEW,
WRIT OF MANDAMUS AND MANDATE, REQUEST FOR DECLARATORY RELIEF,
AND CLAIMS FOR EQUITABLE ESTOPPEL**

Plaintiff Grandview Solar Project LLC (hereinafter "Plaintiff"), by counsel, and for its Verified Complaint for Preliminary and Permanent Injunction, Petition for Judicial Review, Writ of Mandamus and Mandate, Request for Declaratory Relief and Claims for Equitable Estoppel against Town of Grandview, Indiana ("Town"), Town of Grandview, Indiana Board of Zoning Appeals ("Town BZA"), Town of Grandview, Indiana Town Council ("Town Council"), and Town of Grandview, Indiana Zoning Administrator ("Town Zoning Administrator") (collectively, "Defendants") alleges and states as follows:

I. INTRODUCTION

1. This action concerns an impermissible collateral attack on a 2019 Special Exception Zoning Approval issued by the Town BZA to the Grandview Solar Project (the "Project"). The



unconstitutional and statutorily improper attempt by Defendants to stop the Project is animated by anti-solar project sentiment in the Town of Grandview and Spencer County.

2. The Defendants, by and through their legal counsel, Mr. Andrew Foster, Esq., admitted in a public meeting that an Improvement Location Permit (“ILP”) must be issued for the Project.

3. Despite Mr. Foster’s public admission, the Defendants, including the Town Zoning Administrator, refuse to issue the ILP.

4. Defendants’ concerted actions threaten the entirety of the Project and are causing immediate and irreparable harm to Plaintiff, whose total investment in the Project is almost \$30,000,000.00. Without prompt judicial intervention to stop the arbitrary, capricious, unconstitutional, and otherwise unlawful actions of Defendants, the entirety of Plaintiff’s investment in the Project is at risk.

5. The Town Zoning Administrator’s refusal to issue the Project an ILP, and the other Defendants’ acts and omissions in connection therewith, are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law; contrary to constitutional right, power, privilege and immunity; in excess of statutory jurisdiction, authority or limitation, or short of statutory right; without observance of the procedure required by law; and unsupported by substantial evidence.

6. Plaintiff is entitled to preliminary and permanent injunctive relief to enjoin the Defendants’ concerted attempt to stop the Project by failing to issue the ILP. Plaintiff is further entitled to preliminary and permanent injunctive relief to enjoin the Defendants’ impermissible collateral attack on the 2019 Special Exception Zoning Approval.

7. Plaintiff is also entitled to reversal of the Town Zoning Administrator's and Town BZA's decision and refusal to issue the ILP. Plaintiff is also entitled to damages for the irreparable harms caused by Defendants' arbitrary, capricious, unlawful and wrongful actions.

8. Plaintiff is further entitled to declaratory relief and a writ of mandamus / mandate requiring the Town Zoning Administrator to issue the ILP.

II. PARTIES

9. Grandview Solar Project LLC is a Delaware limited liability corporation whose principal address is 1101 Connecticut Avenue NW, Second Floor, Washington, DC 20036.

10. 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.

11. The Town BZA is located at 316 Main St., Grandview, Indiana 47615.

12. The Town Council is located at 316 Main St., Grandview, Indiana 47615.

13. The Town Zoning Administrator, Mr. Keith Nix, is the Zoning Administrator of Town of Grandview, and is located at 316 Main St., Grandview, Indiana 47615.

III. JURISDICTION AND VENUE

14. This Court has jurisdiction over Defendants under Trial Rules 4.4, 4.6, and 4.10 because Defendants are governmental organizations within the State of Indiana, are individuals and boards or bodies acting in their official capacity as representatives of governmental organizations within the State of Indiana, and because the actions at issue occurred within the State of Indiana.

15. Knox County is a preferred venue for this action because the land affected by the zoning decision at issue in this Complaint is located in Judicial District 25, of which Knox County is member. *See* Indiana Code § 36-7-4-1606.

IV. FACTS COMMON TO ALL COUNTS

16. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

17. The real estate underlying the Project is thirty-six (36) certain parcels, identified more fully herein, including but not limited to property located at 4121 North Highland Road, Grandview, Indiana 47615 (collectively, the thirty-six (36) parcels at issue are hereafter referred to as the “Property”).

18. The Project, once owned and developed by Orion Renewable Energy (“Orion”), initially approached Spencer County, Indiana for certain zoning approvals, because most of the Project would be constructed outside of Town of Grandview’s limits.

19. Spencer County, by and through its Administrator of the Spencer County Plan Commission, directed the Project to the Town – namely to seek zoning approval within the Town’s two-mile extraterritorial jurisdiction or “ETJ”.

20. In compliance with Spencer County’s directives, the Project communicated with the Town of Grandview, and filed for zoning approval within the Town’s corporate limits and the ETJ.

21. The Town of Grandview and Spencer County each confirmed the Town had an ETJ and that the Town would be the proper entity to decide matters concerning the ETJ.

22. In November 2019, the Project applied to the Town of Grandview for a special exception approval to build the Project.

23. The application was duly noticed and set for a public hearing to occur on December 12, 2019.

24. At the public hearing, the Town BZA approved the Special Exception (hereinafter the “Special Exception Approval”). A true and accurate copy of the Special Exception Approval

(including the Findings of Fact referenced and incorporated into the Town BZA's approval), are attached and incorporated herein as **Exhibit A**.

25. Neither the Town of Grandview, Spencer County, or any remonstrator or opponent formally opposed (or appealed or otherwise sought legal review) of the Town BZA's Special Exception Approval, or the validity of the Town's ETJ. *See* minutes 9:30-10:21 of the recording of the unlawful July 12, 2023 joint meeting of the Town Council and the Town BZA (wherein Mr. Foster, on behalf of the Defendants, confirmed that when the Town of Grandview gave zoning exceptions for the entire Project and Property, no landowner objected to the Town BZA's action). A true and accurate copy of the recording will be tendered by Plaintiff to the Court on USB and/or DVD-ROM, and is hereafter incorporated herein as **Exhibit B**.

26. Thereafter, the Project expanded its footprint beyond the area in the Town's ETJ.

27. As a result, in 2020, the Project sought a contingent use approval from the County. Before proceeding with that application, Spencer County confirmed that the expanded project real estate fell outside of the Town of Grandview's ETJ and was therefore in the jurisdiction of the County. True and accurate copies of emails between then-Project owner Orion and Spencer County from 2019 to 2020 concerning these matters are attached hereto and incorporated herein as **Exhibit C**.

28. In or around July 2020, the Project applied for a Contingent Use Approval from the Spencer County BZA for approval of the Project (*i.e.* the same solar project that was previously approved by the Town BZA). The 2020 Contingent Use Approval application to the County included reference to the earlier Special Exception Approval the Project received from the Town BZA.

29. On or about September 24, 2020, the Spencer County BZA approved the contingent use (hereinafter the “Contingent Use Approval”). A true and accurate copy of the Spencer County BZA’s Minutes reflecting the Contingent Use Approval is attached and incorporated herein as **Exhibit D**.

30. Neither the Town of Grandview, Spencer County, or any remonstrator or opponent formally opposed (or appealed or otherwise sought legal review) of Spencer County’s Contingent Use Approval.

31. In 2022, prior to Plaintiff’s purchase of the Project from Orion, the Town of Grandview and Spencer County, through their common legal counsel Mr. John Wetherill, Esq., confirmed the existence of the Town’s ETJ and the validity of the Town BZA’s Special Exception Approval and Spencer County’s Contingent Use Approval.

32. Thereafter, in April 2022, Plaintiff acquired the Project from Orion, with construction slated to commence in May 2023.

33. Prior to commencing the ILP application process (discussed below), Plaintiff remained in continuous communication with the Town of Grandview and Spencer County, and on numerous occasions the Town and the County confirmed the existence of the Town’s ETJ, the validity of the Special Exception Approval, and validity of the Contingent Use Approval. *See* the July 5, 2022 Zoning Affirmation, signed on behalf of the County and signed by the Town Zoning Administrator (hereafter “Zoning Affirmation”) attached hereto and incorporated herein as **Exhibit E**.

34. The Town Zoning Administrator affirmed in his Zoning Affirmation that “Grandview Solar has all local zoning approvals that are required from the Town of Grandview

and from Spencer County, and Grandview Solar is authorized to commence with the ILP, building permit or other construction-related permit application process.” See **Ex. E**.

35. Based on the Town BZA’s Special Exception Approval and Spencer County’s Contingent Use Approval (and the Town and County’s Zoning Affirmation and other affirmations regarding same) Plaintiff spent millions of dollars in equipment orders, design services, permitting, and other capital-intensive development activities.

36. The only remaining item required from the Town before construction can proceed is the issuance of the ILP – a ministerial, non-discretionary act required by the Town Zoning Administrator.

37. At first, the Town Zoning Administrator issued an ILP for one (1) parcel contained within the Project and Property.

38. However, there were repeated attempts by vocal, anti-solar project opponents to stop the Project and prevent the Town of Grandview from issuing the requisite ILP needed for the Project and the Property.

39. On June 23, 2023, Plaintiff filed its amended ILP application (the “**Application**”).

40. The Town Zoning Administrator failed to take action on the Application.

41. On July 12, 2023 the Town BZA and Town Council held an unlawful and procedurally improper meeting at the Grandview Civic Center. A true and accurate copy of the final Agenda distributed at the start of the July 12, 2023 meeting is attached and incorporated herein as **Exhibit F**.

42. The purported purpose of this unlawful meeting was to determine whether the Town Council and Town BZA would support the Town Zoning Administrator in his ministerial function of issuing the ILP for the Project and the Property.

43. Nowhere in the Grandview Code of Ordinances is a joint meeting of the Town BZA and Town Council contemplated, authorized, or permitted.

44. The Town BZA is not authorized to convene or conduct *ad hoc* public meetings to consider whether or not to support an ILP.

45. The Town Council is not authorized to convene or conduct *ad hoc* public meetings to consider whether or not to support an ILP.

46. During the unlawful joint meeting, Defendants' legal counsel, Mr. Foster, ultimately instructed the Town BZA and Town Council that the Town Zoning Administrator was required to issue the ILP because no one challenged the Town BZA's earlier Special Exception Approval (from years earlier in 2019), and, therefore, the ILP "should be issued" consistent with Indiana Appellate Caselaw because any argument concerning the validity of the Special Exception Approval or the ETJ was "waived." See **Ex. B**, minutes 15:00-15:40; 19:00-19:10; 47:00-47:10.

47. Notwithstanding their legal counsel's directive (*i.e.* that the ILP should be issued consistent with the Ordinance and Indiana Law), the Town BZA voted on a resolution whether or not to support the ILP issuance. All four members of the BZA voted against the proposal. This amounts to final action of the BZA and gives rise to Plaintiff's right to judicial review of this arbitrary, capricious, and otherwise wrongful denial and refusal to issue the ILP.

48. The Town Council likewise voted on a proposal whether or not to support the ILP. Nowhere in the Grandview Code of Ordinances is the Town Council authorized to be involved in matters concerning issuance of an ILP.

49. The Town BZA and Town Council's improper and unlawful July 12, 2023 meeting was an impermissible collateral attack on the Town BZA's Special Exception Approval.

50. Plaintiff satisfied all conditions precedent for the issuance of an ILP for the Project and Property.

51. The Town Zoning Administrator refuses to issue the requisite ILP for the Project and Property.

52. Spencer County confirmed it issued all necessary permits and that, essentially, the *Town of Grandview* must issue the requisite ILP for the Project and the Property. *See, e.g., Ex. B*, minutes 15:20 to 15:40 (“[Spencer] County told us that we were the ones who should zone for these parcels”). Spencer County has also confirmed this position in certain correspondence to the undersigned.

53. Defendants’ actions are inflicting immediate and irreparable harm upon Plaintiff.

54. Defendants’ unlawful actions are putting at risk the relationship between Plaintiff and its primary contractor, Ames Construction. Specifically, but without limitation, in order to minimize risk caused by not having an ILP, Plaintiff and Ames Construction have elected to delay, and in some instances cancel, equipment orders. These delays and cancellations are directly attributable to Defendants’ unlawful action, and risk the Project being unable to find a timely replacement contractor and/or secure long lead time equipment orders when needed.

55. Likewise, the Project is party to a certain Amended and Restated Generator Interconnection Agreement between the Project, CenterPoint Energy and Midcontinent Independent System Operator, Inc. (“MISO”) (hereafter “Interconnection Agreement”). The Interconnection Agreement contains strict deadlines and commercial and operational milestones; in particular the in-service deadline to reach commercial operation is September 1, 2024. Although Plaintiff is seeking an extension/waiver of that deadline from MISO (and required approval of same from the Federal Energy Regulatory Commission (“FERC”)), there is no guarantee Plaintiff

will receive such an extension/waiver. Therefore, the concerted actions of Defendants are already putting the Project at risk of missing these deadlines and milestones. If the Project misses these deadlines and milestones, the entire Project is at risk.

56. In early 2022, Plaintiff paid millions of dollars to Orion, the initial developer, to purchase the Project. After acquiring it, Plaintiff has continued to invest millions of additional dollars into the Project. All of these investments were made based on Special Exception Approval and Contingent Use Approval from years ago. Further, Plaintiff's investments were also made based on the continued assurances from the Town and the County (including but not limited to the Town Zoning Administrator's July 5, 2022 Zoning Affirmation (*see Ex. E*)) that there were no more discretionary approvals required for the Project to proceed with construction.

57. Plaintiff's total investment in the Project is approaching \$30,000,000.00. Without immediate receipt of an ILP that allows the Project to proceed with construction, Plaintiff is at risk of losing its entire investment.

COUNT I
WRIT OF MANDAMUS / ACTION FOR MANDATE

58. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

59. Plaintiff tendered plans, specifications, and applications that were all approved by the Town, including but not limited to the Town BZA.

60. Plaintiff satisfied all conditions precedent for the issuance of an ILP for the Project and Property.

61. Accordingly, the Town Zoning Administrator had a non-discretionary duty to issue the ILP.

62. Plaintiff has a clear legal right to compel the issuance of the ILP.

WHEREFORE, Plaintiff respectfully requests a Writ of Mandamus / Order for Mandate from the Court, compelling the Town Zoning Administrator to issue an ILP for the Project and Property. Plaintiff further requests the costs of this action, and for all other just and proper relief in the premises.

COUNT II
REQUEST FOR DECLARATORY RELIEF

63. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

64. Pursuant to Indiana Code § 34-14-1-2, any person interested under, or whose rights, status, or other legal relations are affected by a municipal ordinance, may have determined any question of construction or validity arising under the ordinance, and obtain a declaration of rights, status, or other legal relations thereunder.

65. As set forth above and elsewhere herein, it is undisputed that the Project and Property was granted a Special Exception, and that the use – the Project – is now a permitted use pursuant to the plain terms of the Ordinance. *See, e.g.*, Ordinance, 10.06.020.101.

66. Accordingly, the Town Zoning Administrator had a non-discretionary duty to issue the ILP.

67. Moreover, Plaintiff satisfied all conditions precedent for the issuance of an ILP for the Project and Property.

68. Accordingly, the Town Zoning Administrator had a non-discretionary duty to issue the ILP.

69. Pursuant to Indiana Code § 34-14-1-2, Plaintiff seeks a declaration from the Court that the Town Zoning Administrator is to issue Plaintiff the requisite ILP for the Project and the Property.

WHEREFORE, Plaintiff respectfully requests a declaratory judgment from the Court, declaring Plaintiff's rights in the ILP as follows: the Town Zoning Administrator must issue Plaintiff the requisite ILP for the Project and the Property.

COUNT III
JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

70. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

71. Petitioner: Grandview Solar Project LLC, whose principal address is 1101 Connecticut Avenue NW, Second Floor, Washington, DC 20036.

72. Respondent: The Town of Grandview, Indiana Board of Zoning Appeals (“Town BZA”), whose principal address is 316 Main Street, Grandview, Indiana 47615.

73. Property at Issue: The property at issue concerns thirty-six (36) certain parcels, identified more fully herein, including but not limited to property located at 4121 North Highland Road, Grandview, Indiana 47615 (collectively, the thirty-six (36) parcels at issue are hereafter referred to as the “Property”).

74. Description of the Decision at Issue: On December 12, 2019, the Town BZA issued its Special Exception Approval.¹

75. The Grandview Code of Ordinances (“Ordinance”) purports to require an Improvement Location Permit or “ILP” before any development or change in land use can occur.²

76. In contrast to obtaining a special exception (notice, approvals, and other requirements), an ILP merely requires the tender of certain information by the property owner. *See Ordinance, 10.06.020.011.*

¹ See **Ex. A.**

² A true and accurate copy of the Ordinance (Title 10) relevant to this Petition is attached hereto as **Exhibit G.**

77. The Town Zoning Administrator is responsible for reviewing ILP applications and approving or denying same within thirty (30) days. Ordinance, 10.06.020.012.

78. The Town Zoning Administrator issued an ILP for one (1) parcel contained within the Project and Property.

79. On June 23, 2023, Petitioner, by and through their agent Ames Construction, tendered its amended ILP application (“Application”).

80. The Town Zoning Administrator failed to approve or deny the Application within thirty (30) days as required by Ordinance 10.06.020.012 (hereinafter the “Denial”).

81. Following the Town Zoning Administrator’s Denial, the Town BZA set a special meeting for July 12, 2023. The purpose of that special meeting was to make resolutions concerning the Application, the Property, the Project, and Petitioner’s ILP.³

82. On July 12, 2023, the Town BZA affirmed the Town Zoning Administrator’s Denial by, among other acts and omissions, voting 4-0 against the Project, the ILP, and the Application (hereinafter, the “Decision”).

83. The Town BZA failed to issue a written copy of its Decision within five (5) days, as required by Indiana Code § 36-7-4-919(f).

84. The Town BZA is under a legal duty to issue written findings of fact related to its Decision. Indiana Code § 36-7-4-915.

85. As of the date of this Petition, the Town BZA has failed to issue written findings of fact related to its Decision.

³ A true and accurate copy of the BZA’s Agenda for the July 12, 2023 special meeting is attached hereto as **Exhibit E**. True and accurate copies of the Town BZA’s meeting notice and the Town Council’s meeting notice are attached and incorporated herein, respectively as **Exhibit H** and **Exhibit I**.

86. On July 31, 2023, Petitioner, by counsel, requested from the Town BZA a written copy of the Decision and the BZA's written findings of fact purporting to support the Decision.

87. Persons Who Participated in the BZA Hearing: Petitioner appeared by its representatives, Mr. Bartley Higgins and Mr. Mark Brill and by counsel, Attorney Matthew Neumann. The BZA attended by its five (5) members and was represented by its counsel, Attorney Andrew Foster. The Town Zoning Administrator provided no testimony. Town BZA Attorney Andrew Foster provided certain commentary and certain responses to the Town BZA and members of the public during the hearing. Members of the public offered comment during the BZA hearing.

88. Persons Required to be Named: Petitioner has made a good faith and diligent effort to identify persons required to be named pursuant to Indiana Code §§ 36-7-4-1603; 1606. Petitioner does not believe there are any such persons but cannot confirm that fact until the Town BZA issues its certified record. Petitioner will amend this Petition should it learn of any other persons required to be named.

89. Standing: Petitioner has standing to obtain judicial review of the Town BZA's Decision because Petitioner is the entity to whom the zoning decision was specifically directed. *See* Indiana Code § 36-7-4-1603(a)(1).

90. Exhaustion of Administrative Remedies: Petitioner has exhausted all administrative remedies. *See* Indiana Code § 36-7-4-1604; Ordinance, 10.06.020.072(1).

91. Timeliness: Petitioner has timely filed this Petition within thirty (30) days after the July 12, 2023 Decision. *See* Indiana Code § 36-7-4-1605.

92. The Certified BZA Record: On July 31, 2023, Petitioner, by counsel, requested the certified Town BZA record. A true and accurate copy of Petitioner's request for the Town BZA record (and Petitioner's request for the written Decision and the written findings of fact) is attached

hereto as **Exhibit J**. As of the date of this filing, the BZA has not provided the certified record, hearing transcript, written Decision, or written findings of fact.

93. Petitioner will work with the BZA to obtain and file the certified BZA record with this Court as required by Indiana Code § 36-7-4-1613.

94. Venue: Venue is proper in this Court pursuant to Indiana Code § 36-7-4-1606 because Knox County is within the judicial district where the Property affected by the Decision is located.

95. There are multiple legal issues present on judicial review.

96. In reviewing these legal issues, the Court should find the BZA's Decision invalid if the Decision was: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. Indiana Code § 36-7-4-1614.

97. According to the Ordinance, special exceptions, while requiring special consideration by the BZA, shall be deemed "permitted uses" in the district in which it was provided. Ordinance, 10.06.020.101.

98. Stated somewhat differently, once a special exception has been granted for a particular use, that use is "permitted." *Id. See also* Ordinance, 10.06.060.010.

99. Indeed, the ILP merely "flows from" the Special Exception that has already been granted, and the Town Zoning Administrator is only tasked with looking at technical documents related to Project construction – not additional legal approvals. *See **Ex. B***, minutes 16:10-16:30.

100. Since the Project was not a specifically enumerated use in the zoning tables (Ordinance, 10.06.040.010), the Project was required to undergo a special exception application.

101. The Town BZA approved the Special Exception.⁴

102. It is undisputed that the Property was granted a Special Exception, and that the use – the Project – is now a permitted use pursuant to the plain terms of the Ordinance. Ordinance, 10.06.020.101.

103. Moreover, Plaintiff satisfied all conditions precedent for the issuance of an ILP for the Project and Property.

104. Accordingly, the Town Zoning Administrator had a non-discretionary duty to issue the ILP.

105. At this time, but without the benefit of the certified Town BZA record, Petitioner submits the following legal issues for judicial review:

- (1) The Administrator knows the Property has been granted a Special Exception and the Project is therefore “permitted” by the Ordinance. Based on these undisputed variables the ILP should have been issued. (*See* Ordinance, 10.06.020.101).

Therefore, both the Town Zoning Administrator’s Denial, as well as the Town BZA’s Decision affirming the Town Zoning Administrator’s Denial, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

- (2) Even though it was in direct conflict with the Ordinance, the Town Zoning Administrator did not want to solely make the decision on the ILP with this much public scrutiny and attention, so he demanded “some public show” or “public support” or “public approval” to either issue or not issue the ILP. *See* **Ex. B**, minutes 17:00-17:30.

⁴ *See* **Ex. A**, Special Exception Approval (which includes the Town BZA’s Findings of Fact referenced in and incorporated into the Town BZA’s Approval).

Though Petitioner does not have the benefit of the certified BZA record at this time, for the foregoing reasons, the Denial, as well as any reliance thereon by the Town BZA, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

- (3) In addition to being untimely, the bases provided by the Town Zoning Administrator's Denial (specifically, no bases at all) further illustrate the illegality of the Town Zoning Administrator's Denial, which the Town BZA affirmed in its Decision. Indeed, glaringly absent from the Denial was any reference to the express terms of the Ordinance, including what Ordinance provision, exactly, gave the Town Zoning Administrator the authority to deny the ILP. The Town Zoning Administrator's Denial was not grounded in the Ordinance the Town Zoning Administrator (and Town BZA) are required to follow as a matter of law.

Though Petitioner does not have the benefit of the certified BZA record at this time, for the foregoing reasons, the Denial, as well as any reliance thereon by the Town BZA, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

- (4) After closing the public hearing on the matter of Petitioner's Application and ILP, in addition to failing to ask a single question of Petitioner, the Town BZA failed to identify how or why the Ordinance did not permit the intended use (the Project).

Therefore, both the Town Zoning Administrator's Denial, as well as the Town BZA's Decision affirming the Town Zoning Administrator's Denial, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

- (5) Instead of offering substantive rationale for affirming the Town Zoning Administrator's Denial, after closing the public hearing on Petitioner's ILP matter, but before voting, the Town BZA failed to deliberate and merely made a "motion to deny it."

Therefore, the Town BZA's Decision affirming the Town Zoning Administrator's Denial, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of

statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

- (6) For the reasons set forth above, the Town BZA Decision was unreasonable, was made without consideration of the facts, and lacked any basis which might lead a reasonable person to the same conclusion.

Therefore, both the Town Zoning Administrator's Denial, as well as the Town BZA's Decision affirming the Town Zoning Administrator's Denial, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

- (7) The Town of Grandview (including the Town BZA) affirmed in its Zoning Affirmation that the Town BZA approved Petitioner's Special Exception, and that said approval "marks the end of the public participation process." See **Ex. E**. The Zoning Affirmation further confirmed there were "no further approvals required from the Town of Grandview." *Id.* Despite previously confirming the public participation process was concluded, the Town BZA hosted its illegal and improper July 12, 2023 meeting, and at that meeting invited public participation, namely because "it [was] important for [the BZA] to hear from constituents." See, e.g., **Ex. B** at minutes 4:01-4:10. Moreover, despite previously confirming there were no further approvals required, the Town BZA held a vote on July 12, 2023 regarding the ILP, the Application, the Property, and the Project.

Therefore, the Town BZA's Decision affirming the Town Zoning Administrator's Denial, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

- (8) By and through its Decision, wrongfully affirming the Town Zoning Administrator's Denial, the Town BZA acted contrary to Petitioner's constitutional rights, deprived Petitioner of its vested property rights, and engaged in a taking without just compensation under the Fifth and Fourteenth Amendments to the U.S. Constitution, and in violation of the Constitution of the State of Indiana.

Therefore, the Town BZA's Decision affirming the Town Zoning Administrator's Denial, was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, contrary to a constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, was without observance of procedure required by law, and was unsupported by substantial evidence.

106. Petitioner has been prejudiced by the Town BZA's unlawful and invalid Decision.

107. Petitioner reserves the right to amend this Petition should additional issues be discovered following the Town BZA's production of the certified record.

WHEREFORE, Petitioner respectfully requests the Court reverse the Town BZA's Decision. Specifically, Petitioner respectfully requests the Court require the Town BZA to reverse the Town Zoning Administrator's Denial of issuance of the ILP, and declare that the requisite ILP be issued for the Project and Property.

COUNT IV
PERMANENT AND PRELIMINARY INJUNCTION

108. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

109. Indiana Rule of Trial Procedure 65(A) and Ind. Code § 34-26-1-1, *et seq.* allow for the granting of a preliminary and permanent injunction against Defendants in these circumstances and is the most efficient and practicable remedy afforded by law in this situation.

110. Plaintiff is entitled to preliminary and permanent injunctive relief to enjoin Defendants' concerted attempt to stop the Project.

111. Plaintiff is entitled to preliminary and permanent injunctive relief to enjoin Defendants' impermissible collateral attack on the Special Exception Approval.

112. 42 U.S.C. § 1983 authorizes official capacity suits that seek prospective injunctive relief against local governmental officials.

113. Plaintiff has incurred and will continue to incur attorneys' fees in seeking and obtaining an injunction.

114. Defendants' actions have caused and will continue to cause substantial, immediate, and irreparable injury and loss of which Plaintiff may have no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests a permanent and preliminary injunction against Defendants, and all other relief just and proper in the premises.

COUNT V
EQUITABLE ESTOPPEL

115. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

116. Plaintiff tendered plans, specifications, and applications that were all approved by the Town of Grandview, including but not limited to the Town BZA.

117. The Town of Grandview made representations to Plaintiff, including but not limited to representations that the Project was legal, proper, in accordance with all applicable Ordinances, was granted an unconditional Special Exception, and could commence, with the intention that Plaintiff would rely on those representations.

118. Plaintiff reasonably relied on those representations and have been damaged as a result of the Town Zoning Administrator's failure to fulfill his obligations to issue the requisite ILP, and have further been damaged as a result of the Defendants' wrongful acts and omissions as described elsewhere herein.

119. Plaintiff's reliance on Defendants' promises was of a definite and substantial nature, and injustice can be avoided only by enforcement of the promises.

120. As a direct and proximate result of Defendants' actions and/or omissions, Plaintiff has been damaged.

121. Plaintiff has incurred and continues to incur delayed construction costs, has incurred and continues to incur costs related to certain lender obligations, and has incurred other costs and expenses all directly related to Defendants' wrongful acts and/or omissions.

122. Plaintiff's damages and/or reliance damages, based on Defendants' promises, are approximately thirty million dollars (\$30,000,000.00), and continue to accrue.

123. As evidenced by the Town BZA's own Special Exception Approval (including but not limited to the Findings of Fact referenced and incorporated into the Town BZA's approval), the granting of estoppel is consistent with the public interest in this case.

WHEREFORE, Plaintiff respectfully requests judgment be entered in its favor and against Defendants, an Order from the Court directing the Town Zoning Administrator to issue the ILP for the Project and the Property, award Plaintiff its damages and costs, and all other relief just and proper in the premises.

VERIFICATION

I affirm under penalty of perjury that the foregoing statements are true and correct.

Dated: July 28, 2023



Bartley Higgins
Grandview Solar Project LLC

Respectfully submitted,

/s/ Matthew D. Neumann

Mark J.R. Merkle, Attorney No. 10194-49
Matthew C. Branic, Attorney No. 25496-49
Matthew D. Neumann, Attorney No. 29408-49
Christopher W. Bloomer, Attorney No. 34512-29

KRIEG DEVAULT LLP

12800 North Meridian Street, Suite 300

Carmel, Indiana 46032

Telephone: (317) 636-4341

Facsimile: (317) 636-1507

E-Mail: mmerkle@kdlegal.com
mbranic@kdlegal.com
mneumann@kdlegal.com
cbloomer@kdlegal.com

*Attorneys for Plaintiff / Petitioner
Grandview Solar Project LLC*