

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF LONE)
OAK SOLAR ENERGY LLC AGAINST THE)
BOARD OF COMMISSIONERS AND BOARD OF)
ZONING APPEALS OF MADISON COUNTY,)
INDIANA FOR A DETERMINATION UNDER)
INDIANA CODE §§8-1-2-54 THROUGH -67,) CAUSE NO. 45793
8-1-2-101, 8-1-2-115, AND RELATED STATUTES)
REGARDING THE UNREASONABLENESS OF THE)
DECISION OF THE BOARD OF ZONING APPEALS)
UNDER THE COUNTY’S SOLAR ENERGY)
ZONING ORDINANCE)
)
RESPONDENTS: MADISON COUNTY BOARD OF)
ZONING APPEALS AND MADISON COUNTY)
BOARD OF COMMISSIONERS)
)
INTERVENORS: DAVID K. BURTON, JANE A.)
BURTON, ROSS E. HUNTER, KATRINA S.)
HUNTER, CURTIS L. HARRISON, REBECCA)
HARRISON, BOB MILLS, JEAN MILLS,)
RICHARD E. BROWN, KARA L. BROWN, PHILLIP)
R. PRATT, LINDA C. PRATT, LEE WALLS,)
COLT REICHART, and F. DENISE SPOONER)

PETITION TO INTERVENE

David K. Burton, Jane A. Burton, Ross E. Hunter, Katrina S. Hunter, Curtis L. Harrison, Rebecca Harrison, Bob Mills, Jean Mills, Richard E. Brown, Kara L. Brown, Phillip R. Pratt, Linda C. Pratt, Lee Walls, Colt Reichart, and F. Denise Spooner (collectively, “Intervenors”), by counsel, pursuant to 170 I.A.C. 1-1.1-11, respectfully move the Commission for an Order allowing them to intervene in the present action and, in support, state as follows:

1. This proceeding was initiated by Lone Oak Solar Energy LLC (“Lone Oak”), challenging a recent decision by the Madison County Board of Zoning Appeals (the “BZA”)

declining to extend the commercial operation deadline imposed as a condition of a certain 2019 Special Use Approval previously granted to Lone Oak by the BZA (the “Prior BZA Approval”) in connection with a commercial solar development (the “Proposed Project”).

2. As reflected in the Verified Complaint filed in this proceeding, the Prior BZA Approval was granted over objections from the group of remonstrators. Each of the Intervenors was one of those remonstrators.

3. As reflected in the Verified Complaint filed in this proceeding, the group of remonstrators filed petitions for judicial review challenging the Prior BZA Approval. Each of the Intervenors was one of those Remonstrators.

4. As reflected in the Verified Complaint filed in this proceeding, the remonstrators appealed the judicial review case to the Indiana Court of Appeals and also sought transfer from the Indiana Supreme Court. Each of the Intervenors was one of those remonstrators.

5. As relates specifically to the instant matter, Lone Oak requested that the BZA modify a condition of the Prior BZA Approval to extend the deadline to complete construction. That request was denied by the BZA. All of the Intervenors (except Richard and Kara Brown) attended the associated public hearing in connection with the requested extension by Lone Oak. Of the Intervenors that attended, Katrina Hunter, Lee Walls, and F. Denise Spooner all spoke in opposition to Lone Oak’s request. Additionally, Katrina Hunter submitted a petition in opposition. Bob and Jean Mills, and F. Denise Spooner also submitted written materials to the BZA in opposition of Lone Oak’s request.

6. The properties owned by Lee Walls and Colt Reichart are directly adjacent to the Proposed Development on one side.

7. The properties owned by the Burtons, the Mills, the Browns, and the Pratts, are directly adjacent to the Proposed Development on two sides.

8. The properties owned by the Hunters and the Harrisons, are directly adjacent to the Proposed Development on three sides.

9. The property owned by F. Denise Spooner is within 1/8 mile of the Proposed Development.

10. All of the Intervenors' properties referenced above include the Intervenors' personal residences.

11. As reflected above, the Intervenors were involved in the BZA proceedings leading to the Prior BZA Approval, all levels of litigation challenging the Prior BZA Approval, and almost all of them attended and/or participated in the BZA proceeding resulting in the denial of the extension of the construction deadline.

12. If the construction deadline is extended allowing the Proposed Development to proceed, each of the Intervenors will suffer negative impacts to their property values and to their quality of life.

13. Pursuant to 170 1-1.1-11, a petition to intervene may be filed by a person or entity alleging a substantial interest in the subject matter of the proceeding. As set forth above, the Intervenors not only have a substantial interest in the subject matter, but they are directly affected by the ruling ultimately issued by the IURC.

14. The Intervenors are requesting that the IURC deny the Verified Complaint filed in this proceeding for a number of reasons, including but not limited to, the following:

- a. The Commission lacks jurisdiction to award the relief requested.

b. The BZA properly denied Lone Oak's request and the denial was appropriate and reasonable. Indeed, the special exception granted to Lone Oak for the Proposed Development was only permitted upon certain conditions. By seeking to change one of the conditions of approval, Lone Oak reopened the door to the appropriateness of the Proposed Development as a whole.

c. The reasons for the requested deadline extension, which was properly denied, were entirely within Lone Oak's control. For example, there was no stay or injunction in place at any point during the legal challenges to the Prior BZA Approval. Moreover, Lone Oak did not secure, or attempt to secure, other approvals required prior to construction. Any delay was the result of Lone Oak's lack of diligence.

15. The addition of the Intervenor as parties to this case will not unduly broaden the issue or result in unreasonable delay of the proceeding. The Intervenor understands that they are bound by all rulings and other matters of record prior to the time that this Petition is granted, and they take the case as they find it as of the date of intervention.

16. Jason M. Kuchmay of the law firm Snyder Morgan Federoff & Kuchmay LLP, 4211 Clubview Dr., Fort Wayne, IN 46804 is counsel for Intervenor in this matter and is authorized to accept service of all papers in this proceeding on Intervenor's behalf.

WHEREFORE, Intervenor, by counsel, request that this *Petition to Intervene* be granted and that Intervenor be made parties to his proceeding with respect to all matters.

Dated this 27th day of January, 2023.

Respectfully submitted,

SNYDER MORGAN FEDEROFF
& KUCHMAY LLP

/s/ Jason M. Kuchmay

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CERTIFICATE OF SERVICE

I certify that, on January 27, 2023, the foregoing document was electronically served upon the following via electronic transmission:

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