

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

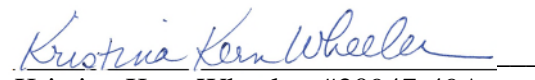
IN THE MATTER OF THE COMPLAINT OF LONE)
OAK SOLAR ENERGY LLC AGAINST THE)
BOARD OF COMMISSIONERS AND BOARD OF)
ZONING APPEALS OF MADISON COUNTY,)
INDIANA FOR A DETERMINATION UNDER)
INDIANA CODE §§ 8-1-2-54 THROUGH -67,)
8-1-2-101, 8-1-2-115, AND RELATED STATUTES)
REGARDING THE UNREASONABLENESS OF THE)
DECISION OF THE BOARD OF ZONING APPEALS)
UNDER THE COUNTY'S SOLAR ENERGY) CAUSE NO. 45793
ZONING ORDINANCE)
)
RESPONDENTS: MADISON COUNTY BOARD OF)
ZONING APPEALS AND MADISON COUNTY)
BOARD OF COMMISSIONERS)

SUBMISSION OF COMPLAINANT'S PREFILED VERIFIED DIRECT TESTIMONY
OF HANNAH PAWELCZYK

Lone Oak Solar Energy LLC ("Lone Oak" or "Complainant"), by counsel, hereby submits
the Prefiled Verified Direct Testimony of Hannah Pawelczyk.

Dated this 9th day of December, 2022.

Respectfully submitted,



Kristina Kern Wheeler, #20947-49A
Nikki Gray Shoultz, #16509-41
Bose McKinney & Evans LLP

PREFILED VERIFIED DIRECT TESTIMONY OF HANNAH PAWELCZYK

ON BEHALF OF LONE OAK SOLAR LLC

Q1. PLEASE STATE YOUR NAME AND ON WHOSE BEHALF YOU ARE TESTIFYING.

A. My name is Hannah Pawelczyk, and I am testifying on behalf of Lone Oak Solar Energy LLC ("Lone Oak" or "Project"). My business address is One South Wacker Drive, Suite 1800, Chicago, Illinois 60606.

Q2. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Invenergy LLC ("Invenergy") as Senior Manager, Renewable Development. I have been delegated responsibility for the development of the Lone Oak Project.

Q3. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL BACKGROUND.

A. I have a Bachelor of Science in Mathematics from the University of Notre Dame and a Masters of Business Administration with concentrations in Finance and Enterprise Risk Management from The Johns Hopkins University. I also attended the Intensive Chinese Language Program at Peking University. At Notre Dame, I received the G.E. Prize for Excellence in Mathematics in May 2014. In May 2018 at Johns Hopkins, I received the J. Stegman CPA Memorial Award for the highest GPA in the full-time MBA Program. After gaining experience in the technology and utility industries, I started working at Invenergy in July 2018 as an Associate, Renewable Development, then was promoted to Manager, Renewable Development in September 2020, and was promoted again to my current role as Senior Manager in March 2022.

**Q4. HAVE YOU PREVIOUSLY TESTIFIED BEFORE GOVERNMENT
BODIES OR AGENCIES?**

A. Yes, I submitted testimony in support of petitions for a declination of the Commission's jurisdiction on behalf of Fairbanks Solar Energy Center LLC in Cause No. 45254; Trade Post Solar LLC in Cause No. 45539; Foundry Works Solar Energy LLC in Cause No. 45639; and Crosstrack Solar Energy LLC in Cause No. 45652. Each of these solar companies are affiliates of Invenergy. I have also testified in front of county boards in Iowa regarding county approvals.

Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. My testimony supports Lone Oak's request for the Commission to find Madison County Solar Energy Ordinance No. 2017-BC-0-01 passed by the Madison County Board of Commissioners ("Board") (the "Ordinance") and the decisions thereunder by the Madison County Board of Zoning Appeals ("BZA") are unreasonable and void pursuant to Ind. Code § 8-1-2-101 and related statutes. In particular, I discuss Lone Oak's request for an extension of the BZA's condition that the Project's commercial operation deadline be extended from December 31, 2023 to December 31, 2025. I have included the transcript from the BZA's June 28, 2022 hearing (the "Modification Hearing") as Attachment HP-1.¹

Q6. WERE YOU PRESENT AT THE MODIFICATION HEARING?

A. Yes, I was present and provided sworn testimony before the BZA on behalf of Lone Oak.

**Q7. WHAT WAS THE BZA STAFF'S POSITION ON THE REQUEST TO
EXTEND THE COMMERCIAL OPERATIONS DEADLINE?**

¹ References to the transcript from the Modification Hearing are abbreviated throughout as "Tr.".

1 A. Rachael Christenson spoke for the BZA staff at the hearing. She testified that Lone Oak's
2 petition "...isn't going back to rehash the other conditions; this is solely looking at
3 Condition Number 19." Tr. 12, ln. 14-17. Ms. Christenson also stated her staff
4 recommendation on Lone Oak's petition:

5 Because of the litigation that was pursuing [sic] after the approval was
6 made, my staff recommendation is to approve the project as presented. I am
7 not going back and speaking to anything that was decided previously with
8 the other conditions. I'm solely looking at Condition Number 19. However,
9 it is up to the Board now to discuss, and ask additional questions, and make
10 a motion.

11
12 Tr. 72, ln. 8-17.

13 **Q8. WHAT EVIDENCE DID LONE OAK PRESENT AT THE MODIFICATION**
14 **HEARING TO SUPPORT ITS REQUEST TO EXTEND THE COMMERCIAL**
15 **OPERATIONS DEADLINE?**

16 A. At the Modification Hearing, Lone Oak explained that the Project itself had not changed,
17 but the litigation regarding the Project in the two years after its initial approval in 2019
18 prevented it from obtaining financing. In short, investors were unwilling to provide
19 financing for a project until the litigation was resolved. In addition to the financing issues,
20 Lone Oak also testified and presented evidence on the supply chain problems caused by
21 the global pandemic that have affected construction. Tr. 31-37. In particular, I testified
22 that while the pandemic has delayed key supplies for most every industry, including the
23 solar industry,

24 ...the key part is with these appeals, we're not able to move forward in the
25 final stages of development for this project. You can't get offtake and you
26 can't get construction financings with appeals pending. So, that's something
27 we'd be looking to work towards now but just haven't been able to for the
28 past two years. We've certainly been trying everything we can to move the
29 project forward, whether that's title curatives, other final studies. But those
30 key items of getting the power contracted and getting construction

1 financings take months, if not a year or more of work, and it's just not
2 possible when appeals are pending.
3

4 Tr. 39. Potential investors and offtakers were scared off by the litigation, and were not
5 interested in risking their capital and business plans on the outcome in the Indiana courts,
6 which they knew would take years.

7 **Q9. ARE YOU AWARE OF ANY LEGITIMATE LOCAL INTEREST IN ENSURING**
8 **THE COMMERCIAL OPERATION DATE OCCURS BEFORE DECEMBER 31,**
9 **2023?**

10 A. No.

11 **Q10. WAS THERE ANY BZA COMMENTARY OR PUBLIC HEARING EVIDENCE**
12 **INDICATING A LEGITIMATE LOCAL PUBLIC INTEREST IN THE**
13 **COMMERCIAL OPERATION DATE OF THE PROJECT?**

14 A. No. All of the commentary from the BZA members and the public related to aspects of the
15 solar project other than the commercial operation date. As the transcript demonstrates, at
16 no time did any individual suggest that extension of the commercial operation date would
17 threaten a legitimate public interest, improperly infringe on land use, or create a danger to
18 public health or safety. Rather, the BZA's denial was based on disdain by selected
19 individuals for solar projects in general.

20 **Q11. WHAT KIND OF QUESTIONS DID YOU RECEIVE FROM THE BZA**
21 **MEMBERS?**

22 A. BZA Chairman John Simmermon expressed concerns that the BZA had not been provided
23 copies of the landowner leases, and asked what impact the Project delay had on those
24 leases. Tr. 37. I responded that we have adequate time under the lease contracts, including
25 up to two years of development term left on our oldest leases, as well as options for

1 extensions. Tr. 38. In other words, the landowner leases will remain in effect “as is” if the
2 extension of the commercial operation date is granted. Mr. Simmermon then asked if Lone
3 Oak intended to increase lease payments due to recent increases in land values. *Id.* I
4 responded that our leases already included inflationary escalators in landowner payments,
5 but that the terms had not substantively changed since the contracts were signed. *Id.*

6 **Q12. WHAT KIND OF STATEMENTS DID REMONSTRATORS MAKE?**

7 A. Remonstrators alleged, despite sworn testimony and other evidence to the contrary, that
8 Lone Oak was lying about the reasons for the delay. One citizen argued that Lone Oak’s
9 claims were pretext for its real intent to influence future elections and then return to the
10 County to seek approval of a previously-denied tax abatement. Tr. 42-43. Remonstrators
11 also claimed that Invenergy was lying when it stated that it could not move forward with
12 the project when the appeal of the initial BZA decision was pending. Tr. 65.

13 **Q13. WHAT OTHER COMMENTS DID THE REMONSTRATORS MAKE TO**
14 **THE BZA?**

15 A. The Remonstrators made several claims without supporting evidence, including:
16 • The Project would cause their homes to be valueless property that should be
17 “bulldozed” and that this was an unconstitutional taking (Tr. 43-44);
18 • Threats of additional lawsuits against Lone Oak if the extension was approved (*Id.*);
19 • Objections to taking prime farmland “out of commission” for solar development (Tr.
20 47, 69);
21 • Claims that Lone Oak’s leases were not binding and that the landowners who have
22 leases did not want the Project, despite those landowners not actually being present at
23 the hearing to testify themselves (Tr. 52);

- 1 • That “free solar energy has no scientific merit” (Tr. 55-56);
- 2 • That President Biden’s energy policy is too aggressive and renewable development is
- 3 happening at the expense of petroleum production, is causing inflation, and “no country
- 4 in the world has been able to industrialize using renewable energy.” (Tr. 60-61);
- 5 • That solar energy is “dirty electricity,” turns the farmland toxic, contaminates the water
- 6 table, and hurts wildlife (Tr. 62-63, 68);
- 7 • That there are only three prime hours a day to collect solar electricity (Tr. 63);
- 8 • That “lives would be ruined” by the solar project (Tr. 66);
- 9 • That solar panels are made in China and the USA does not need them (Tr. 67); and
- 10 • Objections that the energy from the Project will not be used in Madison County and
- 11 goes out of state (Tr. 69).

12 **Q14. WHAT WAS LONE OAK’S TESTIMONY IN RESPONSE TO THESE CLAIMS?**

13 A. Lone Oak explained that the BZA has an obligation as a quasi-judicial body to review our
14 application without bias. We noted that any activities on the site were related to site testing
15 and not construction, and that Invenenergy was telling the truth under oath about the
16 difficulties the litigation caused in obtaining financing and a project offtaker. We noted
17 that Mr. Kaplan’s affidavit (included in his testimony in this Cause as Attachment MRK-
18 3) indicated that Lone Oak had the contractual authority to represent the landowners at the
19 Modification Hearing. Lone Oak also explained that the purpose of the Modification
20 Hearing was not to re-litigate all of the issues in the original BZA decision; that the BZA’s
21 2019 approval of the Project had been upheld by the courts as being supported by
22 substantial evidence (evidence which has not changed or been meaningfully rebutted

1 since); and that the Court of Appeals specifically found Lone Oak was in compliance with
2 the county's ordinance and comprehensive plan. Tr. 70-74. In particular, I testified that:

3 In 2019, the tax abatement was necessary, as quoted, given the market at
4 the time. And then denial of the tax abatement did cause a slight delay at
5 that time. But since 2020, we've only seen costs continue to go down.
6 Solar's one of the lowest cost forms of energy now. And with costs going
7 down and demand, especially from Indiana utilities, continuing to increase,
8 we do – will not and do not plan to pursue a tax abatement for Lone Oak
9 Solar. It's not necessary for the project anymore, given the current market.
10 And as I mentioned earlier, we have it contained with due diligence and title
11 curative tests, but with appeals pending, getting construction financing, and
12 getting offtake for the project is not possible. *Id.*

13
14 **Q15. WHAT REQUIREMENTS APPLY TO AN INDIANA BZA RELATED TO**
15 **CONFLICTS OF INTEREST?**

16 A. Ind. Code § 36-7-4-909(a) states that a board of zoning appeals member may not participate
17 in a hearing or decision of that board concerning a zoning matter in which he/she has a
18 conflict of interest, which includes the following: (1) the member is biased or prejudiced
19 or otherwise unable to be impartial; or (2) the member has a direct or indirect financial
20 interest in the outcome of the decision.

21 **Q16. IN YOUR OPINION, WAS THE BZA UNBIASED?**

22 A. With all due respect, I believe the BZA members showed significant bias against solar
23 development projects. Several comments of the BZA led us to believe that they had spoken
24 to interested parties in violation of conflict of interest laws, and were against solar projects
25 being developed in the county in general, regardless of this Project's circumstances and the
26 fact that the county's zoning ordinance allows solar as a special use. In fact, BZA Vice
27 Chairman Curt Stephenson moved that Lone Oak's petition be denied, stating:

28 As I stated back in 2019, I still – I felt then, as I still do today, that there will
29 be impact to the property owners. And this project has the labor with me
30 with respect to the impact it will have. And so, I am opposed to this project

1 then, as I am still today. And the extension that they're being asked for, I
2 cannot agree with it then and I cannot agree with it today. So, I'm sorry. So,
3 my recommendation to the Board would be not to approve this at all.

4 Tr. 75-76.

5 **Q17. WHAT EVIDENCE WAS PRESENTED TO SUPPORT THE BZA'S DENIAL?**


6 A. There was no evidence presented to support the BZA's denial other than the
7 Remonstrators' and BZA members' personal opinions as I described them above, and are
8 reflected in the Modification Hearing transcript. This opposing "evidence" was irrelevant
9 to the proposed modification at issue. To date, no findings of fact have been signed by the
10 BZA to support its denial, which are required under Ind. Code § 36-7-4-915. *See also,*
11 *Carlton v. Bd. of Zoning Appeals*, 245 N.E.2d 337 (Ind. 1968).

12 **Q18. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 A. Yes.

VERIFICATION

I affirm under the penalties of perjury that the foregoing Prefiled Verified Direct Testimony is true to the best of my knowledge, information and belief as of the date here filed.

DocuSigned by:

CB92D208A2BA46A...
Hannah Pawelczyk


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered electronically or by certified U.S. mail this 9th day of December, 2022 to the following:

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Madison County, Indiana
Board of Zoning Appeals
June 28, 2022

1 CHAIRMAN JOHN SIMMERMON: We'll start
2 the June 28th BZA meeting to order. We'll start
3 out with a word of prayer. Let us pray.

4 Dear Lord, we just thank you for this
5 day, or we thank you for the summer season and
6 the growth that we see. And, Lord, we know
7 that's all part of your gift to us. Lord, we
8 thank you for the many blessings that we have; we
9 thank you for this freedom that we have. We
10 thank you that we're able to celebrate the
11 freedom on July 4th. Lord, and we just -- we
12 take all that for granted throughout this country
13 and, Lord, we just -- we just ask that you will
14 constantly remind us of all of the great
15 blessings and gifts that we have.

16 Lord, as we continue on today, we lift
17 up the military and the policemen and everybody
18 that protects us. Lord, we just ask that --
19 especially over the July 4th weekend -- that you
20 just protect them. Protect them as they protect
21 us, Lord.

22 Lord, as we continue on today, we just
23 pray that you will guide us and help us to make
24 good decisions for the county. This we ask in
25 your name. Amen.

1 We'll stand for the Pledge of
2 Allegiance.

3 (Pledge of Allegiance)

4 CHAIRMAN JOHN SIMMERMON: Stacey will
5 take roll call?

6 OFFICE COORDINATOR STACEY HINTON:
7 Absolutely. Lisa Hobbs? Cory Bohlander?

8 BOARD MEMBER CORY BOHLANDER: Here.

9 OFFICE COORDINATOR STACEY HINTON:
10 Jerry Stamm?

11 BOARD MEMBER JERRY STAMM: Here.

12 OFFICE COORDINATOR STACEY HINTON: Curt
13 Stephenson?

14 VICE CHAIRMAN CURT STEPHENSON: Here.

15 OFFICE COORDINATOR STACEY HINTON: And
16 John Simmermon?

17 CHAIRMAN JOHN SIMMERMON: Here.

18 OFFICE COORDINATOR STACEY HINTON:

19 Thank you.

20 CHAIRMAN JOHN SIMMERMON: Okay, so
21 we're ready for Petition V-012.

22 RACHAEL CHRISTENSON: Are we doing
23 meeting minutes?

24 CHAIRMAN JOHN SIMMERMON? Oh, we've got
25 to do the minutes. Okay, let's go ahead and do

1 the minutes now.

2 RACHAEL CHRISTENSON: You're excited.
3 You're ready to go.

4 CHAIRMAN JOHN SIMMERMON: We have the
5 April minutes -- actually, we have two. We
6 weren't able to vote on the April minutes last
7 time because we didn't have enough people. If
8 you've had a chance to look through the minutes,
9 I'd like to have a motion to approve.

10 BOARD MEMBER JERRY STAMM: I'll make a
11 motion to accept the April 26th BZA meeting.

12 CHAIRMAN JOHN SIMMERMON: Second?

13 MAN 1: Second.

14 CHAIRMAN JOHN SIMMERMON: First,
15 second. All in favor, say aye.

16 GROUP: Aye.

17 CHAIRMAN JOHN SIMMERMON: Motion
18 approved. Now we have the May minutes, May 24th.

19 BOARD MEMBER JERRY STAMM: I make a
20 motion to accept the minutes from the BZA meeting
21 for May 24th.

22 CHAIRMAN JOHN SIMMERMON: Second?

23 MAN 1: Second.

24 CHAIRMAN JOHN SIMMERMON: First and
25 second. All in favor, say aye.

1 GROUP: Aye.

2 CHAIRMAN JOHN SIMMERMON: So, both
3 minutes have been approved.

4 RACHAEL CHRISTENSON: All right. Now,
5 we're ready. Okay, today, I want to kind of
6 reiterate that the way that we are going to do
7 petitions is that petitioners will have 25
8 minutes to speak. After I give my staff report,
9 petitioners will have 25 minutes to speak. The
10 public will have 30 minutes to speak. And then
11 after the public speaks, the petitioner will have
12 an additional five minutes to address anything
13 that the public brought to the Board's attention.
14 So, I will be keeping track of the time to make
15 sure that we stay on schedule, and we stay within
16 our guidelines.

17 Our first petition on new business is
18 2022-V-012. The address is 7532 Sprague Street
19 in Anderson. This is in Adams Township. The
20 petitioners are Fred and Mary Spitz. They saw us
21 a couple months ago for that project that was
22 related to this variance. You guys had granted
23 them a variance on setbacks. Their zoning is
24 Conservation Residential. Their property, as you
25 remember, is approximately 10,000 square feet.

1 At our last meeting, we had talked
2 about how they had -- they were already exceeding
3 their maximum lot coverage. The Spitzes are
4 wanting to build a barn or a garage on their
5 property for storage. Last month, like I said,
6 they were approved for a variance on the
7 setbacks. This one, they're asking for a
8 variance on lot coverage.

9 So, again, the lot is about 10,000
10 square feet. When we did measurements off of the
11 existing GIS, we found that their existing lot
12 coverage is about 32 percent, so they were
13 already exceeding what the allowed lot coverage
14 was, which is 30 percent. With the addition of a
15 30 by 20 garage, this would increase the lot
16 coverage to approximately 38 percent.

17 Last meeting, the Board encouraged them
18 to come back and file this variance. Even though
19 the Board had encouraged them this, from my staff
20 perspective, this could cause issues down the
21 road with drainage. All properties are supposed
22 to keep drainage on their own site and not push
23 drainage off onto other properties. So,
24 therefore, my staff recommendation on this would
25 be to deny it. However, the Board, of course,

1 can make whatever decision that you guys would
2 like.

3 Unless you guys want me to go over the
4 details that we went over a couple months ago, we
5 certainly can do that, but if you guys --

6 CHAIRMAN JOHN SIMMERMON: You might
7 briefly do that, just to get everybody back on
8 track.

9 RACHAEL CHRISTENSON: Sure. Okay, so
10 if you were looking at their meeting packet, you
11 can see that there is -- the petitioner's
12 property is highlighted in the blue, with the
13 blue outline. The new structure that is being
14 proposed would be on the south side of the
15 property, the southeast side of the property.
16 So, they would be doing a driveway extension to
17 where the new structure would be located.

18 CHAIRMAN JOHN SIMMERMON: Off of the
19 original cut?

20 RACHAEL CHRISTENSON: Off of the
21 original cut. There would not be a new cut. You
22 can see that there's a surveyor's report that was
23 added with the meeting packet, and this is
24 showing where the proposed garage would be
25 located. Can you guys see that? Okay.

1 There's photos that have been added to
2 the meeting packet, so you can see what the
3 property looks like. It's an existing one-story
4 residential structure with an attached garage.

5 When we talk about impervious surface,
6 we are talking about anything on the site that
7 does not allow water to penetrate into the
8 ground. So, you know, the house counts as
9 impervious surface, a driveway counts as
10 impervious surface. In my calculations, I didn't
11 include what appears to be a deck on the back of
12 the structure because likely this is allowing
13 water to go through the decking -- you know, the
14 cracks in the decking, so --

15 CHAIRMAN JOHN SIMMERMON: Is this a
16 gravel driveway? I can't remember.

17 RACHAEL CHRISTENSON: Concrete. The
18 existing one is a concrete driveway. Are you
19 guys going to put a concrete driveway back to
20 the --

21 FRED SPITZ: We were planning to,
22 eventually.

23 RACHAEL CHRISTENSON: Okay. So, I did
24 not include a driveway extension in with that lot
25 coverage. So, when we look at driveways, and

1 parking lots and things like that, we consider
2 anything that is --

3 CHAIRMAN JOHN SIMMERMON: Yeah.

4 RACHAEL CHRISTENSON: You know, if it's
5 a crushed stone surface, we still consider that
6 an impermeable surface. So, I guess keep that in
7 mind as you guys are making that decision -- this
8 decision too.

9 Just to go over the calculations one
10 more time, the existing lot coverage in
11 Conservation Residential is 30 percent. The
12 petitioner is currently, without this addition,
13 at 32 percent. And the addition of just the
14 garage is going to increase the lot coverage to
15 38 percent. So, knowing that there's going to be
16 a driveway extension to that lot coverage will
17 likely increase a little bit. All right. Do you
18 guys have any questions for me? If not, I will
19 pass it over to the petitioner.

20 CHAIRMAN JOHN SIMMERMON: Okay, thank
21 you.

22 FRED SPITZ: Good morning, gentlemen.

23 CHAIRMAN JOHN SIMMERMON: Good morning.
24 One question I have for you is the --

25 VICE CHAIRMAN CURT STEPHENSON: Do you

1 need him to tell us who he is?

2 CHAIRMAN JOHN SIMMERMON: One question
3 I have for you -- yeah. You want to go ahead and
4 state your name and --

5 FRED SPITZ: My name is Fred Spitz. I
6 live at 7532 Sprague Street, Anderson, Indiana.

7 CHAIRMAN JOHN SIMMERMON: The
8 rainwater, which way does it flow now?

9 FRED SPITZ: It's going to flow towards
10 the north. Like I'd mentioned before, where my
11 home is, one house away we have a county ditch
12 that you guys maintain. I don't know if it's in
13 them pictures or not but --

14 CHAIRMAN JOHN SIMMERMON: Rachael, he
15 was already at 30 -- you said 32 percent anyway
16 before the garage.

17 RACHAEL CHRISTENSON: Yeah.

18 CHAIRMAN JOHN SIMMERMON: So, he's
19 already over before he starts.

20 RACHAEL CHRISTENSON: Yes.

21 CHAIRMAN JOHN SIMMERMON: Does anybody
22 else have more questions for him?

23 VICE CHAIRMAN CURT STEPHENSON: I guess
24 we're just trying to figure out where the water's
25 going to -- how this is going to affect -- this

1 garage, how is that going to affect the water
2 flow?

3 FRED SPITZ: Well, all the gutters are
4 going to go towards that swell. Like I say, my
5 house is the highest one and we've never had any
6 water issues there.

7 CHAIRMAN JOHN SIMMERMON: Well, I guess
8 I'm more concerned about off of yours --

9 FRED SPITZ: Putting it on to some --
10 yeah.

11 CHAIRMAN JOHN SIMMERMON: I'm concerned
12 about where the water is going to affect the
13 neighbors.

14 BOARD MEMBER CORY BOHLANDER: So, it's
15 to the north. Is that on the other side of the
16 road?

17 FRED SPITZ: No.

18 BOARD MEMBER CORY BOHLANDER: Or is
19 that back here?

20 FRED SPITZ: Right, that swell's back
21 here.

22 CORY BOHLANDER: Okay.

23 FRED SPITZ: That swell goes all the
24 way back there and picks up houses on New
25 Columbus Road and a few houses past us on 500.

1 CORY BOHLANDER: So, your current
2 gutters tapped into that drain already?

3 FRED SPITZ: Most all the water goes
4 that way. Everybody's water does.

5 CHAIRMAN JOHN SIMMERMON: And then from
6 the swell, where does it go? Do you know that?

7 FRED SPITZ: That small waterway that
8 goes to Fall Creek, if you go down 500 before you
9 get to New Columbus, that swell's all connected
10 into there and that all goes down to the creek
11 past the paintball place and all that.

12 CHAIRMAN JOHN SIMMERMON: Now, it
13 doesn't sound like you'd have much water going on
14 to the neighbors, though.

15 FRED SPITZ: Yeah, I don't think it
16 would.

17 CHAIRMAN JOHN SIMMERMON: Does anybody
18 else have any comments for him, questions? Okay,
19 thank you. Is there anybody else here that would
20 like to speak on this? A neighbor or anybody?

21 FRED SPITZ: Thank you for your time.

22 RACHAEL CHRISTENSON: Okay. Well, we
23 are -- this is a variance, of course, so factors
24 to consider when granting a variance, the
25 approval will not be injurious to the public

1 health, safety, morals, and general welfare of
2 the community; the use and value of the adjacent
3 -- of the area adjacent to the property included
4 in the variants will not be affected in a
5 substantially adverse manner; and the strict
6 applications of the terms of the Zoning Ordinance
7 will result in practical difficulties and the use
8 of the property. The situation shall not be
9 self-imposed nor be based on a perceived
10 reduction of or restriction on economic gain.

11 And those items all come from Indiana
12 Code as things that you should be considering
13 when you make your decision today.

14 The findings of facts that I included
15 in the meeting packet are the ones from my
16 perspective for a denial. So, if you guys are
17 looking to approve, we'll need to talk about the
18 findings of facts to make sure that they support
19 your decision.

20 CHAIRMAN JOHN SIMMERMON: Well, in this
21 situation here, I mean, yeah, your findings of
22 facts would vary a little bit just because of the
23 location of his house, the neighbors, and then
24 the swell to get rid of the existing rainwater.
25 That would be something to consider for the

1 approval. The main denial would be because --
2 just because that's what our code states, is 30
3 percent.

4 Anybody like to make any more comments
5 on this or entertain a motion?

6 VICE CHAIRMAN CURT STEPHENSON: I'll
7 make a motion that we deny the request based upon
8 the findings of fact. I do believe that that
9 area -- I'm somewhat familiar with -- just
10 (indiscernible) of water. It is flat out there.
11 I would be concerned if I were a neighbor, the
12 water-shedding of that property would impact
13 others.

14 So, I think that in Rachael's findings
15 of fact, one, it would be -- the lot coverage
16 does exceed the impervious surface area; it'd
17 only be increasing that, causing more problems
18 for runoff water. So, thus, I think the work
19 that she has done should validate that it should
20 be denied.

21 BOARD MEMBER JERRY STAMM: Second.

22 CHAIRMAN JOHN SIMMERMON: It's been
23 first and seconded. Roll call vote?

24 OFFICE COORDINATOR STACEY HINTON: Yes.
25 Cory Bohlander?

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1 BOARD MEMBER CORY BOHLANDER: Yes.

2 OFFICE COORDINATOR STACEY HINTON:

3 Jerry Stamm?

4 BOARD MEMBER JERRY STAMM: Yes.

5 OFFICE COORDINATOR STACEY HINTON: Curt

6 Stephenson?

7 VICE CHAIRMAN CURT STEPHENSON: Yes.

8 OFFICE COORDINATOR STACEY HINTON: And

9 John Simmermon?

10 CHAIRMAN JOHN SIMMERMON: Yes. Are you
11 going to talk about 13?

12 RACHAEL CHRISTENSON: Yes. The next
13 one on the agenda is 2022-V-013. This petitioner
14 is Terry Delong, and he has actually requested a
15 continuance on the project. When I was reviewing
16 his application, there are a few other things
17 that are -- we need to work through first. And
18 he thought it would be best if we just waited
19 until the July meeting, if the Board is okay with
20 that. July 26th, 2022.

21 CHAIRMAN JOHN SIMMERMON: All right,
22 we'll accept that.

23 RACHAEL CHRISTENSON: All right, thank
24 you. Moving on, our next petition is 2022-SU-
25 009. This is a special use application that was

1 submitted by Kaye Lorenzoni. The location is
2 2639 North 300 East in Anderson. This is in
3 Richland Township. The request is a special use
4 to allow a home occupation in the Conservation
5 Residential Zoning District.

6 In our Madison County Land Use &
7 Development Code, we have a couple of different
8 categories for home occupations. The type that
9 she is applying for is a Type 2 home occupation,
10 and this is for a pet grooming business to be out
11 of her garage.

12 In the gray box at the top of your
13 staff report, you can see that special uses may
14 be approved by the BZA only upon determination
15 that the petition meets all of the legal required
16 criteria. And there's four legal criteria that
17 are, I believe, outlined by Indiana Code on
18 things that you should be considering.

19 Our Land Use & Development Code also
20 gives 11 additional items to be considering with
21 a Special Use application, which I've got listed
22 on there for you as well. And I'll walk through
23 those and kind of give you want my perspective is
24 on each of them.

25 Mrs. Lorenzoni has submitted a business

1 plan, which is a very thorough and well thought
2 out business plan. We, as staff, always
3 appreciate when a business plan is submitted
4 because it really outlines exactly what the
5 petitioner will be doing. So, that has been
6 included in your meeting materials.

7 For the criteria for Type 2 home
8 occupation standards, I'm going to go through the
9 list of 11 items and let you know how I interpret
10 what was going on and what was submitted. So,
11 the first one is that the home occupation must
12 not involve retail sales or manufacturing
13 operations but may include professional and
14 personal services or auto, furniture, and
15 appliance repair. With this being a pet grooming
16 service, I'm interpreting that is a personal
17 service, so that meets that checkbox.

18 The home occupation must not involve
19 the employment of any more than one person who
20 does not reside at the location of the home
21 occupation. And the petitioner has committed to
22 the standard, as illustrated in her business plan
23 that she submitted. Kaye is going to be -- she's
24 the owner and the operator of the business, which
25 leads me into the next one. At least one member

1 residing on the premises must be the primary
2 operator of the business, which is Kaye.

3 The home occupation must not require
4 any additional storage or display of equipment or
5 materials, including vehicles, and that includes
6 operable or inoperable vehicles, equipment or
7 appliances being serviced by the home occupation.
8 And, as outlined in her business plan, this home
9 occupation does not require exterior storage or
10 display of equipment on materials.

11 No more than 40 percent of the total
12 floor area shall be used for the home occupation,
13 which again, this will be out of her garage, and
14 that's not more than 40 percent of the total
15 floor area of her primary structure. The home's
16 occupation shall not require any exterior
17 structural or aesthetic alterations, which it
18 does not. Again, she's just doing it out of her
19 garage. She's not applied for any other
20 modifications to be made to the residence. So,
21 if she leaves, the home will still be a
22 residence.

23 The home occupation must not require an
24 identification sign exceeding four square feet
25 attached to the primary structure. And she has

1 not stated that a business plan is -- or she has
2 not stated that signage is needed within her
3 business plan. However, I would encourage the
4 petitioner that if she does -- if she would like
5 to have business signage at some point, that
6 she'll be working with the Planning Department to
7 get a permit for it, and will make sure that it's
8 following the guidelines.

9 The home occupation must not require
10 increasing or enhancing the size, capacity, or
11 flow of any utilities. And it does not. The
12 home occupation must not require that more than
13 additional -- more than two additional parking
14 spaces on the lot, and no additional parking
15 spaces are needed. The petitioner's driveway is
16 going to be used for clients dropping off and
17 picking up animals to be groomed.

18 The last one is that the home
19 occupation must not require the use of commercial
20 vehicles for pickup and deliveries other than the
21 U.S. Postal Service, UPS, or other express
22 couriers. And there's not any large deliveries
23 that are needing to be made that would go beyond
24 the ones that are allowed by ordinance.

25 Let's see. It's really pretty basic

1 and she's really following all of those
2 guidelines that we lay out in the ordinance. So,
3 my staff recommendation on this one is to approve
4 with conditions, which -- my only condition is
5 that she follows the business plan that had been
6 submitted with her application.

7 Do you guys have any questions for me
8 at this point? No? All right. Well, we will
9 let the petitioner come up and she can address
10 any questions that you may have.

11 Just make sure you sign in when you get
12 up there.

13 KAYE LORENZONI: Oh, okay. I don't
14 know if you want to sign it too. Good morning.

15 CHAIRMAN JOHN SIMMERMON: Good morning.

16 VICE CHAIRMAN CURT STEPHENSON: Good
17 morning.

18 KAYE LORENZONI: And this is my
19 husband, Robert. He lives on the property as
20 well. So, I am looking to operate -- the
21 business name is (indiscernible) Flying Fur, out
22 of the garage. There was a diagram that my
23 husband drew up and you guys should all have
24 copies of that as well. There's a third bay to
25 our garage that is already separated with a wall

1 and everything. It was there when we purchased
2 the property basically in September. So, we're
3 just looking to officially make that into a
4 salon. So, I don't have to have customers coming
5 into my home, if that was an option, or anything
6 like that. And it would be economical to do
7 this, opposed to putting a shed or anything on
8 the property as well -- to groom out of that
9 separately from the -- from the house.

10 CHAIRMAN JOHN SIMMERMON: How many dogs
11 do you expect to have there at any one time?

12 KAYE LORENZONI: It depends on the size
13 of the dog, to be honest with you. If I'm doing
14 big dogs all day, maybe three dogs a day, you
15 know.

16 CHAIRMAN JOHN SIMMERMON: Well, I mean,
17 will they all be there at the same time?

18 KAYE LORENZONI: No.

19 CHAIRMAN JOHN SIMMERMON: Yeah, that's
20 what I --

21 KAYE LORENZONI: No. You'd be looking
22 at maybe one to two dogs at a time on the
23 property. Go ahead.

24 CHAIRMAN JOHN SIMMERMON: And no
25 boarding?

1 KAYE LORENZONI: Yeah, I'm --

2 CHAIRMAN JOHN SIMMERMON: Like, it
3 would just be during the groom and then when the
4 customer --

5 KAYE LORENZONI: Yeah. Not looking to
6 do any daycare, no boarding, nothing overnight.

7 VICE CHAIRMAN CURT STEPHENSON: Right.
8 And how many parking spots do you have there now?

9 KAYE LORENZONI: Six? The whole
10 driveway --

11 ROBERT LORENZONI: The driveway is like
12 40 by 70, so --

13 CHAIRMAN JOHN SIMMERMON: That would be
14 one things that -- it's easy to have a car there
15 dropping one off and a car there for picking one
16 up.

17 KAYE LORENZONI: Yeah. It's three cars
18 wide, our driveway is. So --

19 CHAIRMAN JOHN SIMMERMON: Because you,
20 kind of -- you need to consider that.

21 KAYE LORENZONI: Yeah.

22 CHAIRMAN JOHN SIMMERMON: Because you
23 could have two clients there at the same time,
24 one dropping off, one picking up.

25 KAYE LORENZONI: Yeah.

1 CHAIRMAN JOHN SIMMERMON: So, a minimum
2 of two, is what you said?

3 KAYE LORENZONI: Mm hmm. Yeah.

4 CHAIRMAN JOHN SIMMERMON: And are you
5 going to have a sign?

6 KAYE LORENZONI: Undecided.

7 CHAIRMAN JOHN SIMMERMON: It also might
8 help people from pulling into your neighbors'
9 driveway.

10 KAYE LORENZONI: Try to keep them out
11 of the cornfield next door.

12 CHAIRMAN JOHN SIMMERMON: Yeah.

13 KAYE LORENZONI: Google Maps has been
14 difficult with our address. So --

15 CHAIRMAN JOHN SIMMERMON: Yeah, we
16 always kind of like to encourage a small sign or
17 something just so they don't bother other people.

18 KAYE LORENZONI: Yeah.

19 CHAIRMAN JOHN SIMMERMON: Does anybody
20 else have any questions or comments? All right,
21 thank you.

22 KAYE LORENZONI: Okay. Thank you.

23 RACHAEL CHRISTENSON: Thank you. Glad
24 you bought the house too. Public.

25 CHAIRMAN JOHN SIMMERMON: Public

1 opinions. Does anybody else have a -- want to
2 comment on this? Neighbor, whatever? All right.

3 RACHAEL CHRISTENSON: Okay. I just
4 want to reiterate that this is a Special Use
5 application, so this is a use that is generally
6 allowed in a Conservation Residential District,
7 and this is an opportunity for the Board to
8 review what this use is and put any conditions
9 that you feel are necessary on it, in addition to
10 what they have supplied in their business plan.

11 Like I said, my staff recommendation is
12 to approve the application, just as long as she
13 follows her business plan. So, that means that
14 if she were to expand at some point and wanted to
15 do a -- if you did want to do a boarding business
16 out of there, then she would have to come back to
17 this Board and get approval on that piece of it.

18 And if she was going to do any
19 modifications to her house in regards to what the
20 structure looks like, that would also kick her
21 into coming here and talking to the Board again.

22 CHAIRMAN JOHN SIMMERMON: Yeah, there's
23 no change to the outside at all, right?

24 KAYE LORENZONI: No.

25 RACHAEL CHRISTENSON: No. So, if

1 there's not any other questions, you know, again
2 my approval -- or I would recommend this to be
3 approved with the conditions that I had on the
4 recommendation with her business plan.

5 Findings of facts. I guess I can go
6 over that piece of it. I don't think that it
7 would be -- it would negatively impact public
8 health, safety, morals, or general welfare. The
9 requirements and development standards are being
10 met. It will not subvert or permanently injure
11 other property or uses in the same district and
12 vicinity; and it is consistent with the character
13 of the zoning district of the comprehensive plan.

14 CHAIRMAN JOHN SIMMERMON: All right,
15 you've all seen the findings of facts and heard
16 from the petitioner. May I have questions from
17 the Board? If not, entertain a motion.

18 BOARD MEMBER JERRY STAMM: I make a
19 motion to accept the special use petition, 2022-
20 SU-009, along with the submitted business plan
21 and with the findings of facts from the staff.

22 CHAIRMAN JOHN SIMMERMON: Second?

23 VICE CHAIRMAN CURT STEPHENSON: Second.

24 CHAIRMAN JOHN SIMMERMON: First and
25 second. Roll call vote?

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1 OFFICE COORDINATOR STACEY HINTON: Yes.
2 Cory Bohlander?

3 BOARD MEMBER CORY BOHLANDER: Yes.

4 OFFICE COORDINATOR STACEY HINTON:
5 Jerry Stamm?

6 BOARD MEMBER JERRY STAMM: Yes.

7 OFFICE COORDINATOR STACEY HINTON: Curt
8 Stephenson?

9 VICE CHAIRMAN CURT STEPHENSON: Yes.

10 OFFICE COORDINATOR STACEY HINTON: And
11 John Simmermon?

12 CHAIRMAN JOHN SIMMERMON: Yes.

13 OFFICE COORDINATOR STACEY HINTON:
14 Thank you.

15 RACHAEL CHRISTENSON: If you had
16 petitioners -- oh, go ahead.

17 CHAIRMAN JOHN SIMMERMON: Oh, yeah.
18 The petitioners can leave, if they want.

19 RACHAEL CHRISTENSON: I was just going
20 to say that. You don't have to stick around. If
21 you guys want to go, you are all able to leave.

22 Okay, our last petition to discuss is
23 actually some old business. Let me wait for
24 everyone to kind of get settled down. This is
25 Petition Number 19-SU-005. The location is

1 actually multiple locations in Madison County.
2 The petitioner is Lone Oak Solar Energy, LLC, and
3 the zoning district that we're working with is
4 the Agricultural Zoning District. And the
5 request is specifically to modify Condition 19 of
6 Case 2019-SU-005, to replace with the words, "The
7 project shall be complete and operations on or
8 before December 31st, 2025."

9 I'm just going to give an overview of
10 the project history. I want to make sure that we
11 are all aware that we are talking about the
12 modification to Condition Number 19, the
13 timeline. This has already been approved by the
14 Board of Zoning Appeals in 2019. So, this
15 petition that we are discussing today isn't going
16 back to rehash the other conditions; this is
17 solely looking at Condition Number 19.

18 If we are going off track with that,
19 I'm going to try to pull you back in. And again,
20 we're doing 25 minutes for -- did you just say
21 good luck, Curt? (Laughs.) We're going to do 25
22 minutes for the petitioner to speak after my
23 staff report is done. Then we'll give the public
24 30 minutes to speak, and however the public wants
25 to use that 30 minutes is okay. If you want to

1 do, you know, two minutes a person or 10 minutes
2 a person, but we are going to limit it to 30
3 minutes.

4 And then after the public has time to
5 speak, we will give the petition an additional
6 five minutes to speak just to address any issues
7 that were brought up during that public comment
8 period. Okay?

9 So, we all know what the guidelines are
10 and we're going to try to stick to those as best
11 as possible. So, I appreciate everyone's efforts
12 in this today.

13 Project history. The Special Use
14 petition 2019-SU-005 was approved by the Board of
15 Zoning Appeals on September 24th of 2019 to
16 provide for the development of a solar farm to be
17 known as Lone Oak Solar. This is on
18 approximately 1,200 acres in Pike Creek and
19 Monroe Townships in Northern Madison County, and
20 there were 19 conditions that were approved as
21 part of this project approval.

22 The petitioner has properly filed,
23 advertised, and notified a request for
24 modification on Condition Number 19. The
25 petitioner is requesting that this -- or is

1 stating that this will be completed by December
2 31st, 2025 or two years after issuance of a final
3 non-applicable -- appealable -- wrong word --
4 order of a court of competent jurisdiction,
5 affirming the condition modification by the Board
6 of Zoning Appeals. So, basically, that says
7 that, you know, if this does go to court again,
8 that we are not necessarily bound by that
9 December 31st, 2025 deadline. That when they're
10 able to actually start the project, they will
11 have two years after any litigation happens to
12 continue to construct this. So, we don't have to
13 come back to this again.

14 CHAIRMAN JOHN SIMMERMON: Right, the
15 original one -- the original one did not have
16 that.

17 RACHAEL CHRISTENSON: Correct. The
18 original one only had the deadline. It did not
19 give any wiggle room for time if this went to
20 litigation.

21 CHAIRMAN JOHN SIMMERMON: So, we voted
22 -- when we accepted that petition, we accepted it
23 as completely done by 2025, no matter what
24 happened with the courts?

25 RACHAEL CHRISTENSON: Originally, it

1 was approved for 2023, not 2025. They're asking
2 for the --

3 CHAIRMAN JOHN SIMMERMON: I'm sorry.
4 For '23. (Indiscernible) --

5 RACHAEL CHRISTENSON: Correct.

6 CHAIRMAN JOHN SIMMERMON: For '23, but
7 that included that they have to go to court or
8 whatever, appeal it. That was still included --

9 RACHAEL CHRISTENSON: And that's what
10 we're discussing today. So, that, I think,
11 should be part of your Board discussion.

12 CHAIRMAN JOHN SIMMERMON: That's very
13 important...

14 RACHAEL CHRISTENSON: So, obviously,
15 this did go to litigation. You know, as things
16 are getting litigated, I think that property
17 owners or project owners are not able to move
18 forward on their project if there's -- you know,
19 it's a delay on their part -- to be investing in
20 something that could get overturned by a court.
21 So, that's what has caused this situation to be.

22 The other thing that has happened
23 within the last couple years is, of course, we've
24 had the pandemic, which has resulted in supply
25 chain issues. And that is another thing that our

1 petitioner would like to talk about today. So,
2 those are kind of the two big issues, is that
3 this did go to litigation; the second thing was
4 we've had a pandemic and we've had some supply
5 chain issues.

6 So, with that, I will let the
7 petitioner go ahead and speak first, then we'll
8 open it up to public comment, for rebuttal, and
9 then I can talk about staff recommendation, and
10 then you guys can discuss and make a motion on
11 how you want to move forward.

12 MARY SOLIDAY: So, Ms. Christenson, I
13 have a handout. There are three things that I'll
14 talk about -- and here's a packet of information.

15 Okay, well, good morning, members of
16 the Board. My name is Mary Soliday. I'm an
17 attorney. I'm based in Indianapolis. I may be
18 familiar to most, if not all, of you. I was the
19 applicant's attorney back in 2019 and remain
20 involved with Lone Oak Solar and Invenergy. My
21 address is 2700 Market Tower, Indianapolis.

22 With me is Hannah Pawelczyk, who is the
23 project manager for Indiana for Invenergy, and
24 Dan Goldstein, who is overseeing this project.
25 They can answer your questions particularly

1 regarding supply chain issues that Invenergy is
2 facing.

3 So, let me start at the beginning --
4 and I think Ms. Christenson did a very nice job
5 of explaining that we are here to modify only one
6 condition to do with 19 conditions at Lone Oak
7 Solar. We are not here -- and I've discussed
8 this with your attorney, Mr. Graham -- to
9 relitigate your approval, which were really two
10 approvals -- May of 2019 and September of 2019.
11 We are here to talk about the need to modify
12 Condition Number 19.

13 So, we filed what is called a letter of
14 intent, and what we did was try to explain the
15 two issues that bring us here today. The first
16 is that we all know that this project was
17 approved in the fall of 2019. The pandemic hit
18 this country March of 2020. That has caused
19 issues with securing necessary materials and
20 supplies. There's no question about that.

21 But I think what's also important to
22 emphasize is the litigation, frankly, is the main
23 reason we're here today. And I'd like to just
24 take a moment and kind of walk through that
25 timeline because it literally was a two-year

1 period. It's kind of ironic because we're
2 seeking a two-year extension and for that reason.
3 But it literally was a two-year period from
4 initiation of litigation, which by the way, ended
5 up in a reported case in Indiana for the Indiana
6 Court of Appeals, and a ruling that where the --
7 where Invenergy, its investors, its lenders would
8 feel comfortable proceeding. So, there's a two-
9 year period there. So, let me just kind of
10 briefly recite what was involved.

11 So, first of all, Indiana law requires
12 a judicial appeal within 30 days to be filed with
13 the local court, which happened in October of
14 2019. That was filed on October 24th, 2019.
15 Neighbors and multiple parties -- I'm sure many
16 are here today -- filed a petition for judicial
17 review of the BZA's approval. Those petitions
18 challenged the original petition, which was
19 approved in May of 2019, and the secondary
20 petition. And just to remind everybody, we had
21 two applications because the first approval
22 imposed a 500-foot setback, which we continue to
23 honor and are planning. And we need more land to
24 meet that setback, and I think the Board members
25 in place at the time remember all this.

1 So, we had a second application. We
2 had new Board members come in in August of 2019.
3 And then in September of 2019, the secondary
4 application was approved. So, in July of 2020 --
5 so, not quite two years ago -- the trial court
6 held a hearing on the neighbors' petition. On
7 November 2020, the trial court entered detailed
8 findings of fact and conclusions in two separate
9 orders denying the neighbors' relief, that is
10 affirming the original petition and the secondary
11 petition.

12 The neighbors then took an appeal to
13 the Indiana Court of Appeals, which affirmed the
14 trial court in all respects, June 21, 2021. So,
15 just slightly over a year ago. The neighbors
16 then sought transfer to the Indiana Supreme Court
17 and the Indiana Supreme Court denied that -- it's
18 called a Petition to Transfer. That was denied
19 in October of 2021.

20 So, again, going back to the fact that
21 the second application was approved in September
22 of 2019, and the Indiana Supreme Court denied the
23 petition to transfer in October 2021, that's
24 slightly over two years. So, again, all of this
25 litigation resulted in a recorded decision in

1 Indiana case law Burton v. Board of Zoning
2 Appeals of Madison County. So, your decision is
3 marked in history in Indiana judicial laws.

4 So, I say all this again to sort of set
5 the table for the fact that this, in our view, is
6 simply a matter of fairness to the project. We
7 are not, again, seeking any relief from any of
8 the other very strict conditions imposed by this
9 Board. We would like to build this project.
10 There's great demand for solar energy. So, I
11 mean, I -- well --

12 WOMAN 1: (Indiscernible) --

13 RACHAEL CHRISTENSON: Can you please be
14 quiet until it's your turn to talk? Thank you.

15 MARY SOLIDAY: Thank you. So, I'd like
16 to be careful with your time this morning. And
17 so, I think that I'd like to go to what our ask
18 is. And then, Hannah, do you mind saying a
19 couple words about sort of Invenergy's
20 perspective, particularly on supply chain and the
21 delays that the litigation has caused the
22 project, if you don't mind? Okay.

23 So, the specific ask today is we have
24 filed the language that Ms. Christenson read.
25 Yeah, in a perfect world we'd like to have two

1 years after issuance of any final non-appealable
2 order, simply because this decision, were you to
3 make it today, is appealable to a court. And so,
4 will there be another appeal? I have no idea.
5 But I'm not sure any of us want to come back two
6 years from now to address this again if there's
7 two more years of litigation. But that's
8 obviously your decision.

9 So, originally, we filed seeking an
10 extension of two years through December 31, 2025
11 to have the project operational. What we also
12 have done -- and Mr. Graham has reviewed these --
13 is submitted findings of fact for your
14 consideration. Because, as you are aware, if
15 this were to be litigated, the court would look
16 at findings. And so, we have prepared them. And
17 I think Ms. Christenson's looked at them as well.

18 So, our specific request is for a
19 motion to extend -- or modify Condition Number
20 19, as was read into the record. And I'd be
21 happy to read it again in my five minutes of
22 conclusion with specific findings of fact. So,
23 Hannah, would you -- can you --

24 CHAIRMAN JOHN SIMMERMON: I have one
25 question for you.

1 MARY SOLIDAY: Yes, sir.

2 CHAIRMAN JOHN SIMMERMON: On this
3 delay, if it's a two-year delay --

4 MARY SOLIDAY: Yeah.

5 CHAIRMAN JOHN SIMMERMON: -- we were
6 never, ever shown contracts or anything like that
7 between you and the landowners. What does that
8 delay do to their contracts?

9 MARY SOLIDAY: Hannah, can you address
10 that? So, I'm going to call Hannah Pawelczyk,
11 who is the Indiana development manager for
12 Invenergy.

13 HANNAH PAWELCZYK: Good morning. My
14 name's Hannah Pawelczyk, as Mary mentioned. We
15 do have enough time in the leases we've signed
16 with participating landowners to account for
17 potential delays here while we've completed
18 studies. So, we have enough of what we call the
19 development term to cover this period before we
20 can start construction.

21 CHAIRMAN JOHN SIMMERMON: How much time
22 are you talking about?

23 HANNAH PAWELCZYK: Left?

24 CHAIRMAN JOHN SIMMERMON: Yes.

25 HANNAH PAWELCZYK: We have up to two

1 years more currently, at least for our oldest
2 leases, but have extension options within those
3 to continue beyond that.

4 CHAIRMAN JOHN SIMMERMON: But that
5 would be between you and the landowner for the
6 extensions?

7 HANNAH PAWELCZYK: We have the ability
8 to extend in communication with the landowners.
9 But that's correct, between us and the
10 landowners.

11 CHAIRMAN JOHN SIMMERMON: The change in
12 land values and economic situations that's
13 happened in the last two years, do you see any
14 differences in compensation to the landowner or
15 are you keeping the strict contracts that you had
16 from the beginning?

17 HANNAH PAWELCZYK: We have the same
18 terms that were included in our contracts, but
19 they do include an escalator to account for
20 factors like inflation.

21 CHAIRMAN JOHN SIMMERMON: Okay, that's
22 the only question I have on that at this time.

23 HANNAH PAWELCZYK: And just, if I may,
24 to circle back to Mary's comments and questions
25 on our petition here and effects of the supply

1 chain -- certainly, the pandemic has delayed key
2 supplies for most every industry. The solar
3 industry is certainly one of them. But the key
4 part is with these appeals, we're not able to
5 move forward in the final stages of development
6 for this project. You can't get offtake and you
7 can't get construction financings with appeals
8 pending. So, that's something we'd be looking to
9 work towards now but just haven't been able to
10 for the past two years.

11 We've certainly been trying everything
12 we can to move the project forward, whether
13 that's title curatives, other final studies. But
14 those key items of getting the power contracted
15 and getting construction financings take months,
16 if not a year or more of work, and it's just not
17 possible when appeals are pending.

18 MARY SOLIDAY: I think that concludes
19 our presentation. We're again happy to answer
20 any specific questions and we'll obviously hold
21 onto our five minutes for rebuttal. So, thank
22 you so much.

23 RACHAEL CHRISTENSON: Does the Board
24 have any more questions for Lone Oak
25 representatives right now?

1 CHAIRMAN JOHN SIMMERMON: No.

2 RACHAEL CHRISTENSON: Okay. With that,
3 I'm going to stop the time that we had for Lone
4 Oak, and we will go ahead and get started with
5 the public input portion of the meeting. If you
6 are coming up to the podium to speak, we ask that
7 you sign in. There's a sign-in sheet. So,
8 please, sign in and let's do one at a time. And,
9 please, let's keep quiet. If you are -- if
10 there's disruptions, we will be asking you to
11 leave. So, I don't want to do that to anyone at
12 all. I would like everyone to participate fully
13 in this. However, we do need to be respectful of
14 one another so that we can all hear each other
15 and give each other the appropriate time to
16 speak.

17 So, with that, we'll go ahead and kick
18 it off. Again, make sure you sign in.

19 BETHANY KELLER: Rachael, these are for
20 you. I'd like those on public record, please.

21 RACHAEL CHRISTENSON: Sure.

22 BETHANY KELLER: Hello. Do you need me
23 to say my name and address as well?

24 CHAIRMAN JOHN SIMMERMON: Please.

25 BETHANY KELLER: Okay. Bethany Keller,

1 3764 West State Road 20, Alexandria.

2 During the October 2019 County Council
3 meeting, Katya, who was Invenergy's product
4 manager at the time, said that Lone Oak Solar
5 Energy Center would be competing with renewable
6 energy resources nationwide to provide electrical
7 power and said that the reduced cost during tax
8 abatement was necessary.

9 Following the denial of a tax
10 abatement, she wrote an email to the Herald
11 Bulletin -- and this was in the paper October
12 22nd of 2019. "Given the uncertainty around tax
13 abatement, Lone Oak has decided to delay the
14 start of construction on the project that was
15 planned for this fall. We are hopeful we can
16 come to an agreement on a tax abatement at some
17 point in the future."

18 The decision to delay construction in
19 October 2019 was a business decision within
20 Invenergy's control. The first petition, the
21 neighbors had filed for judicial review, and that
22 litigation had begun months earlier in June 2019.
23 Yet, Invenergy still continued with the project
24 and proceeded to ask for a tax abatement.
25 Additionally, announcement of the construction

1 delay came long before pandemic supply chains
2 could have been predicted. The delay is the
3 fault of Invenergy, and a completion date
4 modification should be denied.

5 At the January 2020 Council meeting,
6 the County Council voted to rescind the ERA.
7 Then Councilman Pete Heuer made a statement -- I
8 gave you a copy of an excerpt of the
9 transcription from that meeting -- and he said,
10 they, Invenergy, "can come back for another ERA,
11 tax abatement, whatever they want to. I don't
12 know about the rest of the council but I'm
13 actually quite appalled with Invenergy.
14 Councilmember Steve Sumner and I were personally
15 attacked. Me in my own neighborhood with a flyer
16 from a company that is bullying us into changing
17 our vote". Pete Heuer then went on to lose the
18 2020 primary election only months later.

19 The Indiana Court of Appeals ruled in
20 favor of Invenergy June 21st, 2021. The
21 following week on July 2nd, Katya was quoted in
22 the Herald Bulletin -- I gave you a copy --
23 saying, "We are hopeful the county will consider
24 approving an abatement for the project." Nearly
25 a year later, Invenergy has yet to apply for a

1 tax abatement even though they've said it's
2 necessary for the construction.

3 I wholeheartedly believe that Invenergy
4 has requested this extension only to buy them
5 time to influence our County Council election
6 this November, and then apply for a new tax
7 abatement with the 2023 County Council. If
8 Invenergy's business plan were financially
9 viable, they could have proceeded with
10 construction without being subsidized by our tax
11 dollars. It is therefore not warranted to grant
12 an extension because Invenergy chose to delay
13 this project for their own financial gain. Thank
14 you.

15 KATRINA HUNTER: Katrina Hunter, 10040
16 North, 500 West. So, as most of you know, my
17 home will be affected on three sides from Lone
18 Oak Solar. In 2019, we did have our home
19 appraised. The appraiser at that time told me
20 that we might as well bulldoze our home, sell it
21 to the -- the Lone Oak because we're not going to
22 get anything out of it.

23 That frustrates me. It frustrates a
24 lot of people. And as BZA members, you were told
25 to study the Indiana Citizens Planner Guide as

1 education for your roles to serve Madison County.
2 Chapter 3 is called "Avoiding Pitfalls" and on
3 Page 55, the title of the chapter is called
4 "Beware of Takings."

5 I asked Denise, which she'll have a
6 copy of it to give to all of you when she gives
7 you her binder for real estate studies. In it
8 says, "takings can generally be defined as
9 seizure of private property or substantial
10 deprivation of the right to its free use or
11 enjoyment as a result of government action for
12 which the property owner must be compensated. In
13 some cases, actions of a plan commission or BZA
14 that have good intentions can be taken to court
15 and determined to be takings, causing numerous
16 problems."

17 I have a petition with me today that
18 has 28 signatures on it from homeowners. They're
19 either going to be affected on size, three, four,
20 two, one, some of them zero but they're going to
21 be in close enough proximity that this will
22 affect the property value.

23 I don't want to live next to an
24 industrial nightmare and neither does anybody
25 else. And if Lone Oak gets built, we will have

1 our homes appraised before and after
2 construction. And if it is determined that we
3 have lost value on our homes, we agree to consult
4 legal counsel together -- maybe separately -- but
5 there will be legal counsel consulted to bring a
6 suit against Madison County and the landowners
7 signing these leases for the unfair taking of
8 property values.

9 It has been told to us that you had to
10 vote for Lone Oak Solar because they were going
11 to sue the county. Well, the people here have
12 proved that we can sue the county. We can sue
13 the government. We have. We will again. After
14 all, citizens of Madison County fought for 38
15 years to stop the Mallard Lake dump and we can be
16 in this legal battle for the long haul too.

17 So, today, we are putting our
18 government and the landowners on notice, and
19 we're not going to stop fighting. I only have 28
20 signatures on here, but since just this morning
21 I've had 20 more step up and tell me that they
22 would've signed it, had I been able to get them -
23 - if they were not on vacation or our schedules
24 meshed up.

25 So, I thank you for your time but

1 please consider.

2 SAM HEISER: Hi. My name's Sam Heiser.
3 I live over in Cicero, Indiana, own some property
4 here, and I just wanted to say, Mr. Simmermon,
5 your prayer about being grateful for freedom I
6 think is pretty applicable here. A farmer can
7 raise corn, or soybeans, or whatever he pleases;
8 I don't know why he couldn't raise electricity.

9 I have -- I'm not going to be living
10 net to these places, but I've got solar panels of
11 my own 200 feet from my house, and I can
12 guarantee you my house is appraising just fine
13 the last couple of years -- just been tremendous
14 property values. And the only thing that bugs me
15 about them is sometimes it's hard to see the
16 white tail on the wild turkeys, and I just kind
17 of move over a little bit and I can see them just
18 fine. And when I look at my electric bill, they
19 look pretty darn nice.

20 The only thing that's really changed in
21 the last couple years is that we've had these
22 legal battles and also the fact that gas prices
23 are coming off the roof here and we've got energy
24 dependence on all these countries. We've got
25 Russia that's totally dependent upon -- or Europe

1 totally dependent on Russia. God made the
2 sunshine on every square inch. It's right there
3 for the taking. It doesn't pollute. You guys
4 looked at this very, very closely in 2019 and
5 made sure that there weren't any issues with the
6 tiles or anything else. You were thorough. The
7 only thing that's changed is we need this more
8 now than we ever did before.

9 I've got to go to work, so I apologize.
10 But I think you did a good job in 2019. I don't
11 see what's changed. And I understand people not
12 wanting change but, man, I've got solar panels in
13 my yard, and I'll tell you what, they're just
14 fine. Thank you.

15 MELISSA RUBRECHT: Hi, my name --
16 excuse me. Hi, my name's Melissa Rubrecht. I'm
17 at 10636 North 400 East in Alexandria. I just
18 wanted to speak for a minute today and reiterate
19 what Denise and everyone else has said today.
20 There are a lot of reasons why we need more
21 farmland in this day and age, as far as what
22 grocery prices are, and to take more farmland out
23 of commission and use it for this purpose is
24 wrong. And I feel strong about that. And I
25 don't speak just for myself.

1 I wanted to let you know that I worked
2 on a political primary campaign this spring. I
3 made 500 phone calls to residents in Monroe
4 Township, and two people were in favor of solar.
5 Every other person I spoke to said, you know,
6 what do we do -- what do we need to do. And we
7 had an impact and changed the outcome of that
8 election.

9 So, I ask you to reflect on the opinion
10 of the people who have to live with this and
11 consider that in your vote today. Thank you.

12 DENISE SPOONER: My name is Denise
13 Spooner. I'm at 139 West Oak Street, Alexandria.
14 I'm a licensed real estate broker 14 years in
15 Madison County. I have specialized education in
16 property management and land owning and I served
17 on the Madison County BZA for the majority of
18 2020, was appointed to the Planning Commission in
19 September of '21 by the County Cooperative
20 Extension.

21 I've extensively studied Indiana
22 Citizens Planner Guide and have continued my
23 education in land use development in various
24 classes and webinars. For the past three-and-a-
25 half years, I continued research study and I stay

1 educated on large scale solar farms regarding
2 their approval processes, construction, and
3 impacts of their surroundings. I am not an
4 attorney and nothing I say today is to be
5 considered as legal advice. I defer to Jeff
6 Graham as the County's attorney.

7 Lone Oak's statement today in that
8 letter of intent says, "These circumstances, all
9 completely outside of the control of the
10 applicant, have required the project to be
11 delayed accordingly. As a result, a modification
12 of Condition 19 to allow the project to be
13 constructed and operational on or before December
14 31, 2025 is not only necessary but also
15 warranted, justified, reasonable and
16 appropriate."

17 In the front page of your binder, I've
18 defined those words for you. Warranted, meaning,
19 deserved and necessary; justified, meaning, just
20 and right; reasonable, governed by or being in
21 accordance with reason or sound thinking being
22 within the bounds of common sense and care;
23 appropriate means fit, suitable and proper.

24 Page 18 of your Indiana Citizens
25 Planner Guide states that a Board of Zoning

1 Appeals is a -- direct quote -- "administrative
2 Board that is quasi-judicial in nature. A quasi-
3 judicial entity operates more like a court than a
4 legislative body and uses many standards and
5 procedures like the courts. BZA decisions are
6 required by state law to be guided by specific
7 criteria and made based upon facts, not
8 opinions."

9 So, in case you didn't know or needed
10 reminding, essentially you are judges, and this
11 is a court. In cases such as this that generate
12 a lot of controversy, whereas experts have been
13 called to testify or to highly suggest that you
14 ask them to swear in under penalty of perjury to
15 tell the truth. I do consider myself a highly
16 educated individual in regards to large-scale
17 solar and their impacts to health, welfare,
18 safety, and property values.

19 I mostly cite education that I have
20 learned from other experts but, regardless, I
21 voluntarily will state today that I, Denise
22 Spooner, do solemnly swear to tell the truth, the
23 whole truth, and nothing but the truth, so help
24 me God.

25 Secondly, I want to make it clear that

1 I do respect your positions. I was given legal
2 advice today and I was told to shoot every arrow
3 that I have in my quiver, and I plan to do that.

4 I'm going to skip to number two and
5 state that the BZA previously failed that the
6 elements for special exception would be met only
7 if certain conditions were imposed. This is what
8 you stated. This is what you ordered in your
9 findings of fact. All the conditions must be
10 met.

11 Now, those conditions are not being
12 met. Lone Oak needs to seek a change of one of
13 them. This request now reopens the door,
14 according to our legal team. Would the proposal
15 meet the requirements for a special exception
16 with new requested conditions? And so, we are
17 back to the four questions that BZA must answer
18 and give according to the findings of fact stated
19 by law. And by granting these changes now, you
20 are stating that you were wrong in 2019.

21 So, I'm going to move on to Number 3.
22 Lone Oak has provided Exhibit A, which is their
23 list of names and property owners that they
24 allege to have leases and contracts with. We
25 argue that at least one of these parcels was

1 sold, rendering some data inaccurate.

2 They had submitted Exhibit B, which
3 contains a few short paragraphs pulled from this
4 lease in question. We'll make the argument that
5 Lone Oak has not proven that they can, in fact,
6 speak for or on behalf of the owners. Random
7 provisions purportedly to be torn -- or taken
8 from the lease are inadequate without the entire
9 lease showing signatures, proving that this was
10 executed and legally binding contracts and that
11 they exist. You cannot cherry-pick a few
12 sections out of context. What is above and below
13 these provisions is important as well as
14 understanding how these impact and limit
15 landowners.

16 Obviously, Lone Oak doesn't want anyone
17 to see their leases. I've been a landlord for 14
18 years, and if I chopped out a couple paragraphs
19 of my lease and presented it before a judge in an
20 eviction case, I'd be laughed at, and my case
21 dismissed.

22 In addition to not proving -- or
23 providing legal binding lease contracts to the
24 BZA, Lone Oak cannot prove that everyone that
25 supposedly signed these leases with them wants to

1 continue with this project. Without the original
2 executed leases and some kind of an amendment
3 being drawn up, signed, and given for an
4 extension of expiration dates from every
5 landowner, Lone Oak cannot prove that their
6 project is still viable and desired by all.
7 According to our attorney, this is one of the
8 single most important legal arguments today, and
9 we ask Mr. Graham and members of the BZA to
10 demand legal proof and stand on this issue as not
11 justifiable, appropriate, warranted to grant the
12 extension because Lone Oak has not proven they
13 can act on behalf of the landowners without these
14 executed leases and all -- they all still want to
15 participate beyond these expiration dates.

16 We make the argument that Lone Oak
17 should not use litigation as an excuse because
18 there was no injunction and there was no stay
19 from any court that they couldn't move forward.
20 They could've proceeded while the case was being
21 challenged but chose not to. Lone Oak has
22 presented no evidence that they can meet the new
23 deadline that they have even proposed. There's
24 no statements from suppliers, there's no orders
25 of equipment showing expected delivery dates,

1 equipment, efforts to build a solar farm. They
2 haven't even gained drainage Board approval.
3 Where have they been? If they wanted another tax
4 abatement, they could've come back before the
5 council at any time. They have not done so.

6 It's not warranted to grant an
7 extension knowing no court's prevented them from
8 building and they've made no effort to try and
9 move forward. We make the argument that Lone Oak
10 has openly declared that they were delayed --
11 that they were going to delay this farm because
12 of tax abatement has been covered.

13 I'm going to move on to address that
14 our attorney has stated that this question opens
15 the door. I will not talk about anything that's
16 prior been said in 2019, but we certainly have a
17 lot of new data that we've learned since then
18 that covers tons of property values. In that
19 binder you will have reports from Mary McClinton
20 Clay, a very experienced -- over 30-some years in
21 Master Appraisal Institute, where her designation
22 is imminent domain and damage studies. She is
23 the key appraiser throughout the United States
24 that has been testifying everywhere, and when she
25 does, it is unanimous in favor of her reports.

1 I also want to bring your attention to
2 in September of 2020, it was discovered that
3 Tommy Cleveland, Lone Oak's expert who testified
4 in 2019 -- he falsely claimed that the North
5 Carolina cooperative extension authored his
6 research paper and that is completely untrue.
7 And the head of the property cooperative
8 extension in North Carolina has provided a
9 statement to these facts. It's in your binder
10 and I'd highly recommend that you please read
11 them.

12 After realizing that there's a lack of
13 agronomists and soil scientists being sought on
14 this, I want you to please read and exhibit -- on
15 Line Item 7, how Professor Von Heiniger's email
16 communication with me is something that every
17 farmer needs to see. He addresses the pollinator
18 sheet, (indiscernible) GreenBiz, farming under
19 solar panels. And he included in his email to
20 say to me, "As you can see, common sense goes out
21 the window whenever solar companies get involved
22 in the conversation. We are turning science on
23 its head. All of these things have no basic
24 scientific merit, just as the idea of free solar
25 energy has no scientific merit yet. We see so-

1 called researchers quoted in these articles that
2 are nothing more than garbage. Best wishes to
3 you and like our God, science is not fooled by
4 these falsehoods. These folks will reap what
5 they sow, and they're sowing destruction with all
6 that they touch."

7 We now have Steven Miller's study that
8 was in June 2020 where he completely did what
9 would happen if you took out these acres. The
10 impacts would be over \$82 million to Madison
11 County, up against Invenergy's promise of 26 in
12 revenue.

13 To the property values, Rhode Island
14 University has done a study on the entire state
15 of Rhode Island and Massachusetts. We have over
16 500,000 real estate transactions and 208 solar
17 farms that were looked at. This said, also these
18 results suggest extremely large disamenities for
19 properties in very close proximity. You need to
20 understand that the Rhode Island largest solar
21 farm is only 38 megawatts, and in Massachusetts,
22 7.1 megawatts. These are very small, only
23 affecting properties on one side. It is
24 definitely going to be a huge disamenity for
25 those that are surrounded by solar farms.

1 There's something else in this study
2 that was revealed, and it says this. Solar
3 installations require over 10 times more land
4 area than nonrenewable sources to generate the
5 same amount of energy, and the requirement of
6 large land tracts -- of large tracts of land for
7 their construction has become the largest cause
8 of land use change in the United States. Do you
9 know the three words that stand out to me the
10 most? Land use change. And it is common
11 knowledge, taught and expounded in land use
12 classes that once a change happens, it never goes
13 back to its original use. And this has been a
14 question that I have posed to so many.

15 If solar farms meet the comprehensive
16 plan to protect farmland, and the decommissioning
17 statements in those findings of fact state that
18 at the end of the life of the project, the
19 developer can replace those panels and continue
20 the energy source, then how does it protect
21 farmland when it never gets back to farming
22 activity. I asked Brad Newman this question last
23 year and he stated this. Sorry.

24 (Audio Tape Plays)

25 BRAD NEWMAN: (Indiscernible).

1 DENISE SPOONER: That's our former
2 planning director who gave me that statement in
3 2021. And that was after asking him, how does
4 this land ever return back to farming. I think
5 it's really important that you understand this is
6 a permanent land use change and no guarantee on
7 the landowners or the developers that they will
8 go back to farming. And that's in our
9 Comprehensive Plan.

10 The experts who performed this at Rhode
11 Island University accurately described what is
12 happening to America's farmlands. They're
13 experiencing a land use change at massive speeds.

14 In September 2020, appraiser Mark
15 Hechman from Pennsylvania released his report.
16 There's numerous impacts to that. What's so
17 important about it is that the BZA relied upon
18 the CohnReznick study in 2019. And you need to
19 know that he said about that study that it was
20 unacceptable, woefully inaccurate data, very
21 deceptive, misleading, fatally flawed analysis,
22 and lacked the transparency required to produce
23 an ethical and credible decision.

24 Another appraiser, Mary McClinton Clay
25 has provided new evidence regarding her

1 CohnReznick study as well. And I have been told
2 that in order to get this actual data you must
3 agree to sign a nondisclosure statement.
4 Therefore, this BZA did not even have that data.
5 You've read just an overall report about it.

6 So, appraisers have gained access,
7 though, to the data through third parties, and
8 once it is reviewed, they come to the same
9 conclusions that it contains errors, flaws, and
10 numerous representations. In addition to this,
11 you need to know CohnReznick failed to disclose
12 that their partner company, CohnReznick Capital,
13 provides numerous services to renewable energy
14 companies, including project finances, merger,
15 acquisitions, capital raising, tax advisory, and
16 restructuring. Therefore, if CohnReznick makes a
17 lot of money from renewable projects, then
18 wouldn't their real estate studies be a conflict
19 of interest?

20 In Sections 11 and 12, I go into
21 everything that Mary McClinton has said. And the
22 other thing that I wanted to bring out is that
23 Michael Maru, he falsely claimed to the Madison
24 County BZA that there were no property value
25 declines on the North Star Solar Farm in his

1 report. Mary McClinton Clay did that report and
2 provided it to me in 2020. And it that the
3 developer, when he went to sell those properties
4 back to the public, he lost over \$627,000 in
5 revenue. And she reviewed all of his data as
6 well and this is her quote. "It is my
7 professional opinion that this report failed to
8 adequately support its conclusion that there was
9 no diminution in value as a result of proximity
10 to the solar facilities, as cited. This was
11 compounded by reporting errors, lack of sales
12 analysis, in addition to withheld critical
13 information. It is fundamentally flawed and
14 incomplete on all accounts."

15 She goes on to talk about many other
16 things in her reports. It's a 90-page report
17 that I've given you and I would highly recommend
18 that you read it.

19 The first part of that, she gives you a
20 overall summary of everything that she's gained
21 throughout the entire U.S. and is -- and to this
22 date, is the most extensive review of injury to
23 property values yet.

24 I also am bringing it to the attention
25 of the Indiana Chamber of Commerce president. In

1 a letter to the editor regarding inflation, he
2 stated this. "The rush to implement green energy
3 policies is also to blame. These initiatives
4 have directed suppliers to go to the renewable
5 energy route at the expense of petroleum
6 production. Specifically, this has driven up
7 prices at the pump and for everything else related
8 to oil, the Biden administration has simply tried
9 to go too far, too fast with its energy policy."
10 I guess apparently it seems that Invenergy is its
11 own blame as to the reason why some of these
12 delays are happening.

13 And, lastly, Professor (indiscernible)
14 had submitted new information, and he stated this
15 week that Bjorn Lomborg, President of the
16 Copenhagen Consensus, and a visiting fellow at
17 Stanford's Hoover Institution, published a paper
18 in the Wall Street Journal entitled "The Rich
19 World's Claim at Hypocrisy" in which he states
20 unequivocally, "no country in the world has been
21 able to industrialize using renewable energy."

22 In closing, I know I'm very passionate
23 about this and I've never stopped seeking
24 education since 2019. I fought with all my heart
25 to defend what started out just to be this little

1 corner of northwestern Madison County, but then
2 grew to all of our county, and then all of
3 Indiana, and then the Midwest, and now my nation
4 that I love dearly.

5 The war that is going on in rural
6 communities across this country rages daily as
7 renewables take over our farmland and engulf
8 homeowners that do not want to live inside an
9 industrial power plant. If anything -- if any of
10 you or anyone here wish to speak with me
11 privately to discuss these studies, I will do so.
12 And I can only pray that God would guide you,
13 give you wisdom and courage to do the right thing
14 for our county. If you have any questions, I'd
15 be happy to answer them. Thank you very much for
16 the time that you've given me. I appreciate it.

17 PEGGY ROBY: My name is Peggy Roby. I
18 live at 4285 East 1000 North, Alexandria. When
19 Sam Heiser talked about living with solar panels
20 and having -- his home value hadn't gone down, I
21 rushed out to tell him if he had solar panels at
22 his house, he'd better get this meter that reads
23 how much dirty electricity is being released.
24 Because the solar panels contain carcinogens, and
25 they break down, and they're going to have to be

1 replaced. And these carcinogens, they collect
2 the solar energy. How else could we get the
3 solar energy collected?

4 I'm really shook up because of what he
5 told me when we were out there. But anyway, I
6 was warning him about getting a meter because
7 these carcinogens that are in the solar panels --
8 that energy is collected but then it's got to be
9 transferred. And the only way you can move that
10 energy from those panels is like, AC to DC or
11 vice versa -- but there's dirty electricity given
12 off. And it's a fact.

13 There's an Indiana study done by
14 Indians in the technology institute -- and they
15 did 200 studies between 2000 and 2018, and they
16 found that it does leave the farmland toxic.

17 So, anyway, I went out to warn Sam. I
18 get so nervous when I'm talking in front of
19 people. But I sent out -- went out to warn him
20 about getting a meter so he could know what's
21 coming into his home and might affect him. You
22 can get fibromyalgia, you can get headaches, you
23 can get cancer.

24 And I said to him, I said, do you have
25 a meter to monitor how much energy -- how much

1 this thermal electricity is affecting you? And
2 he said, no, ma'am. He said, no. He said, I'm
3 not bothered by these panels at all. And he said
4 the value of his house hadn't gone down. Well, I
5 said, so you have panels around you; what do you
6 think about the people who put the panels in? I
7 said, do you profit from it? And he is receiving
8 money from the solar company. He has panels that
9 are there because he signed on to receive
10 benefits from the solar company.

11 So, when he came up here, he didn't
12 mention that. And I said, Mr. Heiser, you didn't
13 mention that you're receiving profit from the
14 company. I'm sorry, he said, I should've said
15 that I was, you know, receiving -- you know,
16 signed on with them.

17 So, please don't be duped by somebody
18 coming and saying, oh, my home value's the same,
19 I'm not affected at all, I don't mind, I can look
20 around the corner and see the bobwhites. That's
21 not true. Our wildlife is going to take off and
22 be gone. I will have it three sides around me if
23 it goes in in Madison County and Alexandria.

24 I'm pleading with you, look into
25 space.com, read what Australia's doing. They're

1 going to space collection of solar energy; not
2 terrestrial. Indiana only has three prime hours
3 a day that we can even collect energy. I know my
4 time's up. Thank you very much.

5 RACHAEL CHRISTENSON: We have about
6 three more minutes left of public input. So,
7 let's please be respectful of the time.

8 LEE WALLS: Mine's going to be quick.
9 Lee Walls, 4955 West 1000 North, Franklin,
10 Indiana. Lone Oak Solar has said that they could
11 not move forward with the project during
12 litigation. That is an absolute lie and this BZA
13 needs to realize that. They have been working in
14 these fields, they have been testing, they have -
15 - as late as this last March, they were drilling.

16 So, the fact that they're claiming that
17 litigation has stopped them, that is an absolute
18 lie. Because I could not understand how they
19 were doing anything during litigation because I
20 also believe that should've shut them down, but
21 it did not.

22 These are not good community members,
23 folks. They will not be good community members.
24 They do whatever they want, whenever they want,
25 regardless.

1 So, I just want this BZA to know that
2 they are not telling you the truth when they said
3 they could not move forward, because they have
4 been moving forward ever since you approved this
5 to be built. Thanks.

6 KEVIN KELISH: Kevin Kelish, I live at
7 10413 North 700 West Elwood. And, folks, I mean,
8 all this is about money. Let's talk about
9 people's lives. Money -- how many people are
10 benefitting off of this? Just a few landowners,
11 and it's affecting lots and lots of good people's
12 lives that work and live out here and do things
13 right. And we're going to ruin their homes with
14 this just to benefit a few?

15 Like the one man who just spoke -- he's
16 from Cicero. Yeah, he don't care about nothing
17 around here. Most of them -- I mean, I'm sorry,
18 I know everybody in the neighborhood. I've been
19 here all my life. They -- it's all play money.
20 That's all it is, is play money. That's all this
21 world knows.

22 Let's get back to living. It's not
23 about money, it's about living. These people's
24 homes are going to be ruined. Their lives --
25 they're going to get up and move. And our

1 animals -- hell, yeah, our animals are important
2 to us. God put them here before us. Let's take
3 care of what we have. We just keep -- and
4 another thing -- all this stuff comes from China
5 -- we don't need China. If we can't make it
6 here, we don't need none of it. And all the
7 pollution it'd get to get it here.

8 It's not green, people, it's just bad.
9 It's money for a few. And if they didn't get
10 their 25 million upfront from our taxpayer money
11 that we work for, they wouldn't even be here.
12 They wouldn't be here. So, let's just let them
13 go.

14 I don't want to ruin these people's
15 lives. They're good people out here. Yeah, and
16 it's not about money. Let's -- this world needs
17 to change -- this all about money makes you
18 better than everybody else. That's all this is.
19 Let's be neighbors. Thank you --

20 RACHAEL CHRISTENSON: I did want to
21 read two emails that I got this morning. All the
22 other emails that we've received in the past week
23 or so we've included in your materials to review.
24 But I had one that came in at 4:53 a.m. and one
25 at 7:36, so I just want to make sure they're part

1 of all this.

2 The first one is from Josh Harris. It
3 says: "To whom it may concern. My family and I
4 have been residents of Madison County for six
5 years. I've enjoyed my little piece of land. We
6 moved to the country to have our quiet nights and
7 amazing sunsets and to be away from businesses
8 and industries. I cannot stress enough how
9 objective I am of this solar monster farm. These
10 panels are far more hazardous" -- sorry. "These
11 panels are far more hazardous to the environment
12 than the years of coal burning that they would
13 substitute and cannot be properly disposed.

14 A list of some of my concerns: what
15 are the chances of my water table being
16 contaminated; have there been testing of similar
17 sized panel farms less than 500 feet from a
18 residence; my view of sunrise and sunsets over
19 corn and bean fields will now be over an
20 industrial power plant.

21 Number 3. My property value will
22 decrease 20 to 40 percent, based on searches of
23 similar completed projects in other areas. There
24 are none of this magnitude.

25 Number 4. Not one kilowatt would be

1 used in this county. All of this power created
2 goes to the highest bidder, likely out of state.
3 They get perks -- they get the perks of power
4 without the byproduct of polluted grounds and
5 skies.

6 They have stated that" -- this is
7 Number 5. "They have stated that only local
8 contractors would be used, but the ones doing
9 testing on the land have all been from out of
10 state. I assume that means local to them. I
11 have and always will stand for bettering our
12 environment and supporting green ways, but this
13 is not the answer. This is about corporate greed
14 and government incentives.

15 I know my little voice won't count for
16 much, but I am screaming, do not do this to the
17 county residents. Thanks for listening. Josh
18 Harris."

19 The other one is from April Singer.
20 And she says that "Madison County does not want
21 solar panels, especially not on prime farmland.
22 Please vote no on Petition 2019-SU-005.
23 Sincerely, April Prickett." Well, her email says
24 April Singer, and she signed it April Prickett.
25 And that's, I think, all the public input that we

1 have.

2 The public input portion of the meeting
3 is up now, and we will allow for an additional
4 five minutes with the petitioner to address
5 anything that came up during public input.

6 MARY SOLIDAY: So, first of all, I'd
7 like to make sure that it's clear my comments
8 today are under oath, as are Ms. Pawelczyk. So,
9 first of all, I think the BZA is well aware, but
10 I need to say this for the record, that the BZA
11 sits as a quasi-judicial body and is not to be
12 having private conversations about this matter
13 with any particular party.

14 Number 2. I think it was stated by
15 Invenergy that testing was going on in the last
16 two years. That was not precluded by the
17 litigation. And the reason -- Mr. Graham, as an
18 attorney is well aware of this -- there was not
19 an injunction sought. And the reason the
20 opponents did not seek an injunction, the bond
21 would've been so cost prohibitive, it would've
22 been a multimillion-dollar bond.

23 And so, there were certain activities
24 that were going on. Those were not prohibited by
25 the litigation. But the core problems that

1 Hannah will speak to in just a moment again were
2 basically the fact that the project was not
3 financeable, it was -- it could not obtain
4 investors during the course of litigation.

5 So, Hannah, I'm going to have you say
6 under oath the current position of Invenergy is
7 that because power production costs have actually
8 gone down with solar, it's actually a less
9 expensive way to produce power than coal. What
10 is the company's current position on tax
11 abatement?

12 HANNAH PAWELCZYK: Yes, thank you. In
13 2019, the tax abatement was necessary, as quoted,
14 given the market at the time. And then denial of
15 the tax abatement did cause a slight delay at
16 that time. But since 2020, we've only seen costs
17 continue to go down. Solar's one of the lowest
18 cost forms of energy now. And with costs going
19 down and demand, especially from Indiana
20 utilities, continuing to increase, we do -- will
21 not and do not plan to pursue a tax abatement for
22 Lone Oak Solar. It's not necessary for the
23 project anymore, given the current market.

24 And as I mentioned earlier, we have it
25 contained with due diligence and title curative

1 tests, but with appeals pending, getting
2 construction financing, and getting offtake for
3 the project is not possible. Thank you.

4 MARY SOLIDAY: So, the final couple
5 minutes -- again, this is for a record, so I'm
6 sure this is obvious to you members of the Board.
7 Again, we're not relitigating the underlying
8 approval. I do find it interesting that the
9 lawsuits that were filed never made any
10 allegation about loss of property value. There
11 were various allegations but that was not one of
12 them. I think that claim's probably been waived,
13 but that can be decided another day.

14 So, leases, by the way -- I think
15 that's -- it's important to note that your case
16 file contains a sworn affidavit of Mr. Michael
17 Kaplan indicating under oath that he does have
18 authority on behalf of all the landowners to file
19 the application before you today. That is the
20 same process that was in place in 2019 where Mr.
21 Newman accepted a sworn affidavit of an officer -
22 - and this gentleman, Mr. Kaplan, is the senior
23 vice president -- indicating that it -- truly he
24 has and continues to have legal authority to file
25 the application.

1 As to drainage board, I think that
2 falls in the bucket of highly expensive to pursue
3 that approval. That's certainly on our list.
4 There's a very high level of engineering that has
5 to be done to obtain that approval. You all
6 have, to your credit, a very tough drainage
7 ordinance. And that is certainly something we
8 intend to pursue very soon. We haven't done it
9 yet.

10 So, I think, in sum, kind of
11 interesting in terms of what you heard this
12 morning. The Indiana Court of Appeals in the
13 Burton matter pointed two things out. One is
14 that your decision in 2019 was supported by
15 substantial evidence. It rejected the argument,
16 by the way, that the approval was in violation of
17 the Comprehensive Plan.

18 So, nothing has changed since then in
19 terms of -- heck, that that's a snapshot in time
20 as to what the court looked at in terms of the
21 record. We're not here, again, to relitigate the
22 2019 approval. There were references to various
23 folks who would've said this and would've said
24 that. That's completely irrelevant. We're here
25 today on this narrow topic -- and I guess I have

1 one minute -- and that's all I have to say. And
2 I am happy to answer any of your questions, as
3 with Hannah. So, thank you very much for your
4 attention.

5 RACHAEL CHRISTENSON: I think everyone
6 did a wonderful job sticking to the time. I'm
7 very proud of everyone.

8 Okay. At this point I will give my
9 staff recommendation. Because of the litigation
10 that was pursuing after the approval was made, my
11 staff recommendation is to approve the project as
12 presented. I am not going back and speaking to
13 anything that was decided previously with the
14 other conditions. I'm solely looking at
15 Condition Number 19. However, it is up to the
16 Board now to discuss, and ask additional
17 questions, and make a motion.

18 CHAIRMAN JOHN SIMMERMON: Rachael, so
19 one question I have is, with the petition we
20 could decide the December 2025 with or without
21 the second part of that?

22 RACHAEL CHRISTENSON: Correct. Yeah.
23 You know, so what is -- I guess, the staff
24 recommendation for approval is to extend the
25 deadline to December 31st, 2025 or two years

1 after the issuance of a final non-appeal --
2 appealable order of the court competent -- of
3 competent jurisdiction.

4 So, you know, you guys absolutely can
5 decide what piece of that you want to include in
6 your motion or not. You know, from a staff
7 perspective, there is a lot of -- not that this
8 isn't a valuable process to go through but, you
9 know, if -- maybe consider if you want to sit and
10 go over this again if there is something else
11 that comes up. And that -- I'm not saying that
12 one way is right or wrong, it's just a
13 consideration to make. And that's why that
14 additional condition was put on -- or that
15 additional two years after any litigation may
16 occur. Because that's very likely that that
17 could happen again in this situation. So.

18 CHAIRMAN JOHN SIMMERMON: Any more
19 comments or questions from the Board?

20 VICE CHAIRMAN CURT STEPHENSON: I would
21 like to make a motion that this request be
22 denied. As I stated back in 2019, I still -- I
23 felt then, as I still do today, that there will
24 be impact to the property owners. And this
25 project has the labor with me with respect to the

1 impact it will have. And so, I am opposed to
2 this project then, as I am still today. And the
3 extension that they're being asked for, I cannot
4 agree with it then and I cannot agree with it
5 today. So, I'm sorry. So, my recommendation to
6 the Board would be not to approve this at all.

7 RACHAEL CHRISTENSON: All right. Curt,
8 is that a motion that you're making? Did he make
9 a motion? Okay.

10 BOARD MEMBER CORY BOHLANDER: Second.

11 OFFICE COORDINATOR STACEY HINTON: Who
12 seconded? I'm sorry, I did not hear.

13 RACHAEL CHRISTENSON: Cory.

14 BOARD MEMBER CORY BOHLANDER: I did.

15 OFFICE COORDINATOR STACEY HINTON:

16 Thank you.

17 CHAIRMAN JOHN SIMMERMON: Okay, it's
18 been first and seconded. We'll have a roll call
19 vote?

20 OFFICE COORDINATOR STACEY HINTON: Yes.
21 Cory Bohlander?

22 BOARD MEMBER CORY BOHLANDER: Yes.

23 OFFICE COORDINATOR STACEY HINTON:

24 Jerry Stamm?

25 BOARD MEMBER JERRY STAMM: No.

1 OFFICE COORDINATOR STACEY HINTON: Curt
2 Stephenson?

3 VICE CHAIRMAN CURT STEPHENSON: Yes.

4 OFFICE COORDINATOR STACEY HINTON: John
5 Simmermon?

6 CHAIRMAN JOHN SIMMERMON: Yes.

7 (Applause)

8 RACHAEL CHRISTENSON: And I think that
9 is all the business that we had on the agenda
10 today. So, if there's not anything else that the
11 Board needs to discuss, I think we are done.

12 Hold on, I think we need to officially
13 adjourn the meeting. So, if we can please quiet
14 down.

15 CHAIRMAN JOHN SIMMERMON: Do we have
16 any other miscellaneous, anything else we need to
17 -- before the next meeting -- or to talk about?

18 RACHAEL CHRISTENSON: I don't think we
19 have anything else that we need to talk about
20 before the next meeting. So.

21 CHAIRMAN JOHN SIMMERMON: Is the other
22 petition going to come up the next meeting? The
23 one that we --

24 RACHAEL CHRISTENSON: The appeal?

25 CHAIRMAN JOHN SIMMERMON: The one --

1 yeah. Well, the one that we postponed, that we -
2 -

3 RACHAEL CHRISTENSON: Oh, yeah, the
4 continuance. Yes, that will be heard at the July
5 BZA meeting. Mm hmm.

6 CHAIRMAN JOHN SIMMERMON: Okay. Does
7 anybody else have any comments? Motion to
8 adjourn?

9 VICE CHAIRMAN CURT STEPHENSON: Motion
10 to adjourn.

11 BOARD MEMBER JERRY STAMM: Second.

12 CHAIRMAN JOHN SIMMERMON: So moved.

13 RACHAEL CHRISTENSON: Thank you.

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the
foregoing transcript is a true and accurate
record of the proceedings.



Veritext Legal Solutions
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: November 30, 2022

[& - absolute]

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