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IN THE PULASKI SUPERIOR COURT

CAUSE NO. 66D01-2009-PL-\_\_\_\_\_

CONNIE EHRLICH, DANIEL KNEBEL, )  
JENNIFER KNEBEL, JOHN MASTERSON, )  
TONI MASTERSON, LARRY E. LAMBERT, )  
GAIL T. LAMBERT, KEITH W. DAVIS, )  
GALE J. DAVIS, and DEAN A. CERVENKA, )

Petitioners,

VS.

MAMMOTH SOLAR a/k/a STARKE SOLAR  
LLC, GLOBAL ENERGY GENERATION, LLC,  
and the PULASKI COUNTY BOARD OF  
ZONING APPEALS,

**Respondents.**

## VERIFIED PETITION FOR JUDICIAL REVIEW

Connie Ehrlich, Daniel Knebel, Jennifer Knebel, John Masterson, Toni Masterson, Larry E. Lambert, Gail T. Lambert, Keith W. Davis, Gale J. Davis, and Dean A. Cervenka (collectively referred to as, the “Petitioners”), by counsel, for their Verified Petition for Judicial Review, state as follows:

1. Connie Ehrlich is an individual with a principal place of residence and mailing address of 6830 Ripple Creek Drive, Lafayette, IN 47905.
2. Daniel Knebel and Jennifer Knebel are individuals with a principal place of residence and mailing address of 5802 W. 200 N., Winamac, IN 46996.
3. John Masterson and Toni Masterson are individuals with a principal place of residence and mailing address of 3915 W. 200 N., Winamac, IN 46996.

4. Larry E. Lambert and Gail T. Lambert are individuals with a principal place of residence and mailing address of 3343 N. 700 W., Winamac, IN 46996.

5. Keith W. Davis and Gale J. Davis are individuals with a principal place of residence and mailing address of 2776 N. 800 W., Winamac, IN 46996.

6. Dean A. Cervenka is an individual with a principal place of residence and mailing address of 106 Erik Drive, Bozeman, MT 59715.

7. The Pulaski County Board of Zoning Appeals (the “BZA”) is a zoning board with an address of 125 South Riverside Dr, Room 150, Winamac, Indiana 46996.

8. Mammoth Solar (“Mammoth”) is an assumed business name for Starke Solar LLC, a Delaware limited liability company with a principal place of business at 325 Stone Road, North Abington Township, PA 18414.

9. Global Energy Generation LLC (“GEG”) is a Delaware limited liability company, operating as a joint venture for Clean Air Generation LLC and Doral Group Renewable Energy Resources Ltd., and has offices in Philadelphia, Chicago, and Tel Aviv.

10. The Pulaski County Indiana – Unified Development Ordinance, Ordinance #2019-08 (the “UDO”) was adopted by the County Commissioners of Pulaski County (the “County Commissioners”) on December 16, 2019, effective January 1, 2020.

11. The County Commissioners approving the adoption of the UDO were Kenneth Becker, Jerome Locke, and John McClure.

12. The UDO provided that Commercial Solar Energy Systems are permitted in the A-1 Zoning District upon satisfaction of the criteria for a special exception. The UDO also identified, among other things, the necessary components for a Commercial Solar Energy System application, as well as the process and criteria for approval.

13. Commissioner Kenneth Becker owns 154.28 acres of real property being leased to Mammoth as part of the Solar Farm that is the subject of this judicial review.

14. Commissioner Jerome Locke owns 224.82 acres of real property being leased to Mammoth as part of the Solar Farm that is the subject of this judicial review.

15. The Petitioners maintain that the two County Commissioners' ownership of property that is part of the Solar Farm created a conflict of interest, and that those Commissioners should not have voted on the enactment of the UDO.

16. Contemporaneously with the filing of this Petition, the Petitioners have separately filed a Complaint for Declaratory Judgment against the Commissioners seeking to invalidate the UDO.

17. After the enactment of the UDO, on June 24, 2020, Mammoth submitted a Petition for Special Exception, Docket #07272020-01 (the "Solar Application"). A true copy of the Solar Application is attached as Exhibit "A".

18. The Solar Application did not include all of the information and/or items required by the UDO and should not have been processed. By way of example, the submitted Solar Application did not include, among other things, an engineering certification, a site layout plan (development plan drawn to scale, including distances and certified by a registered land surveyor), topographical map, or communications study.

19. The Solar Application seeks to develop one of the largest commercial solar farms in the country on approximately 4,511 acres of real property located in the A-1 zoning district, and which is currently used for crop production.

20. The BZA is comprised of 5 members: Derrick Stalbaum (Chairman), Phil Woolery, Matt Kelsey, Abby Shidler-Dickey, and Jeremy Wentz.

21. Public hearings before the BZA on the Solar Application were held on July 27 and August 24, 2020 (the "Public Hearings").

22. The Notices for the July 27 Public Hearing were not sent via certified mail as required by Indiana law and the BZA Rules of Procedure. Notices for the August 24 Public Hearing were not sent at all.

23. Ten days prior to the Public Hearing, Mammoth was required to stake off the property lines of the subject parcels but did not do so.

24. GEG presented on behalf of Mammoth Solar at the Public Hearings and was identified as the developer of the Solar Farm.

25. Prior to the second Public Hearing, the Chairman of the BZA, Derrick Stalbaum, approached Connie Ehrlich, and informed her that if the Solar Application passes, any lawsuit challenging the approval will fail. This was perceived as an attempt at intimidation, and evidence of bias in that the Chairman (and the BZA as a whole) had already decided the Solar Application would be approved without receiving, or considering, the applicable evidence.

26. Additionally, the father of BZA Chairman, Derrick Stalbaum, works for individuals who are leasing the largest amount of land in connection with the Solar Farm. Stalbaum works for his father in connection with that land, and has performed work for those individuals (the Browns) including hauling and spreading manure. Stalbaum should not have participated in the proceedings relating to the Solar Application due to the resulting conflict of interest, and his vote should be disregarded.

27. BZA member, Abby Shidler-Dickey has land under contract with a solar company. Shidler-Dickey should not have participated in the proceedings relating to the Solar Application due to the resulting conflict of interest, and her vote should be disregarded.

28. BZA member, Phil Woolery, does not reside in Pulaski County and fails to meet the eligibility requirements to serve as a member of the BZA. Phil Woolery should not have participated in the proceedings relating to the Solar Application, and his vote should be disregarded.

29. During the Public Hearings:

a. The BZA hand selected who was entitled to enter the hearing room and imposed unreasonable time limitations on those opposing the Solar Application. In fact, those opposing the Solar Farm retained the services of two professionals – an attorney and a licensed real estate broker. Those professionals were not permitted to complete their presentations.

b. Many individuals opposing the Solar Application were not permitted inside the meeting room, even though seats were available, and those individuals were not allowed to speak in opposition.

c. Those turned away were told they needed to pre-register in order to enter the room, although no notice of any such requirement was provided to the public in advance of the public hearing.

d. The Petitioners presented evidence establishing, among other things:

i. That the Solar Farm is incompatible with Pulaski County's Comprehensive Plan. The Comprehensive Plan seeks to preserve the rural character of Pulaski County, and to protect and preserve adequate land for farming. The Comprehensive Plan also seeks to encourage desirable commercial and industrial development where disturbance to productive agricultural land is minimal. In fact, the Comprehensive Plan states that preservation of prime agricultural land should be a priority, and recognizes that Pulaski County is a migratory

resting place for sandhill cranes. The Solar Farm will violate each of the foregoing provisions, among others, and will negatively impact endangered whooping cranes.

ii. That the Solar Farm would have a negative effect on neighboring property values. The BZA even acknowledged that may be the case, but voted to approve the Solar Application regardless, because the BZA deemed the project beneficial to the County in other ways. That is not the standard and violates the requirements of the UDO for approval of a special exception.

iii. That the size, nature, and intensity of the Solar Farm is not compatible with an A-1 zoning district, that noise, vibration, light, and other byproducts of the Solar Farm are more objectionable than operations of permitted uses, and the Solar Farm will conflict with public services – including the provision of fire and emergency/safety services.

iv. That the intended use of a Solar Farm is not the most desirable use of the land that is the subject of the Solar Application. The most desirable use is the present use of crop production and retaining the rural character.

30. The BZA failed to consider the evidence presented in opposition to the Solar Farm, much of which was uncontradicted.

31. Mammoth failed to satisfy the requirements for approval of a special exception.

32. Despite the foregoing, on August 24, 2020, by a 5-0 vote, the BZA voted to approve the Solar Application (with certain conditions and commitments)(the “BZA Decision”). As noted above, the Petitioners contend that three members should not have participated or voted due to the failure to meet eligibility requirements, or due to a conflict of interest. Disregarding those 3 votes would render the approval invalid because 2 favorable votes is insufficient to approve a special exception.

33. The BZA's written decision (or findings of fact) is attached as Exhibit "B" and does not satisfy the criteria for approval of a special exception.

34. Persons who participated in the Public Hearings are identified in the attached Exhibits "C" and "D". Exhibit C is the appearance for record of public hearing for each person who spoke, or who forfeited their time to allow another to speak, as well as the sign-in sheets for the Public Hearings. Exhibit D is a list of persons that filed written statements.

35. The Petitioners appeared at the Public Hearings in person and/or by counsel and presented relevant evidence, and are further aggrieved by the BZA Decision. Pursuant to I.C. §36-7-4-1603(2), the Petitioners have standing to obtain judicial review.

36. All of the Petitioners either: (i) own real property within 660 feet of the proposed Solar Farm; (ii) reside within 1 mile of the proposed Solar Farm; or (iii) own homes that will be bordered by the Solar Farm's panels.

37. Given the proximity of Petitioners' properties to the Solar Farm, and the nature of the Solar Farm, Petitioners' property values will suffer, as will the Petitioners' quality of life, in the event the Solar Farm is permitted to proceed.

38. Petitioners have exhausted all administrative remedies and are entitled to file this Petition pursuant to I.C. §36-7-4-1604.

39. This Verified Petition was filed within 30 days of the BZA Decision and was timely filed.

40. Petitioners are prejudiced by the BZA Decision, which decision is: (i) arbitrary and capricious; (ii) unsupported by substantial evidence; (iii) not in accordance with the law (including Indiana's Open Door Law); (iv) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and (v) without observance of procedure required by law.

41. Pursuant to I.C. §36-7-4-1613(a), Petitioners hereby request the BZA to prepare the original or certified copy of the BZA's record for judicial review and to deliver the same to Petitioners' counsel so that Petitioners can transmit the BZA record to the Court within 30 days after filing this Verified Petition. If the BZA fails to timely transmit the BZA's record to Petitioners' counsel, Petitioners reserve the right to request an extension of time to file the zoning record with the Court.

42. Petitioners have complied with the notice provisions of I.C. §36-7-4-1608 by having notice served by either Sheriff or by certified mail, return receipt requested, on:

- a. Chairperson of BZA;
- b. Karla Pemberton, BZA Secretary;
- c. Mammoth;
- d. GEG; and
- e. Petitioners requested the BZA to provide a list of persons who requested notice of a petition for judicial review, pursuant to I.C. §36-7-4-1606(c), but the BZA stated no such persons requested such notice. If there is a list of such persons that the BZA failed to produce, Petitioners request leave to supplement their notices under I.C. §36-7-4-1608.

43. Petitioners requested the BZA to provide a list of persons who participated in the Public Hearings. Exhibit C was provided by the BZA and the names comprising Exhibit D were derived from documents provided by the BZA. If additional names are required, Petitioners request leave to supplement.

**WHEREFORE**, Petitioners, by counsel, respectfully request that the Court grant this Verified Petition for Judicial Review, reverse the BZA Decision, enter an Order denying the Solar Application, and provide all other just and proper relief.



We affirm, under the penalties for perjury, that the foregoing statements of fact are true and correct.

*Connie L. Ehrlich*

Connie Ehrlich

*Daniel Knebel*

Daniel Knebel

*Jennifer Knebel*

Jennifer Knebel

*Larry E. Lambert*

Larry E. Lambert

*Gail T. Lambert*

Gail T. Lambert

Dean A. Cervenka

*John Masterson*

John Masterson

*Toni Masterson*

Toni Masterson

*Keith W. Davis*

Keith W. Davis

*Gale J. Davis*

Gale J. Davis

Respectfully submitted,

SNYDER MORGAN FEDEROFF  
& KUCHMAY LLP

/s/ Jason M. Kuchmay

Jason M. Kuchmay, #20974-02

4211 Clubview Dr.

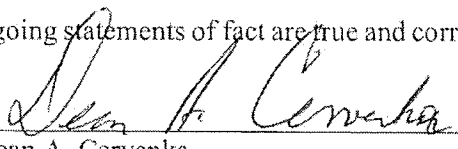
Fort Wayne, IN 46804

Telephone: (574) 457-3300

Attorney for Petitioners

We affirm, under the penalties for perjury, that the foregoing statements of fact are true and correct.

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Connie Ehrlich

  
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Dean A. Cervenka

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Gale J. Davis

Respectfully submitted,

SNYDER MORGAN FEDEROFF  
& KUCHMAY LLP

/s/ Jason M. Kuchmay

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