

STATE OF INDIANA	)	IN THE JENNINGS COUNTY CIRCUIT COURT
	)	SS:
COUNTY OF JENNINGS	)	CAUSE NO.
COBIA SOLAR LLC,	)	
Petitioner,	)	
	)	
Vs.	)	
	)	
DECATUR COUNTY	)	
BOARD OF ZONING APPEALS,	)	
Defendant.	)	

### **VERIFIED PETITION FOR JUDICIAL REVIEW**

Petitioner, Cobia Solar LLC (“Cobia”), by counsel and pursuant to Indiana Code § 36-7-4-1600 *et seq.*, respectfully petitions for judicial review of the Decatur County Board of Zoning Appeals decision of August 6, 2025, denying Cobia’s application for special exception. Cobia submits this Verified Petition for Judicial Review and states as follows:

### **FACTUAL BACKGROUND**

1. This appeal seeks judicial review of the Decatur County Board of Zoning Appeals’ (“BZA”) decision (the “BZA’s Decision”) denying Cobia’s August 30, 2024 Special Exception Application (“Application”) to construct a solar energy facility on certain real estate in Decatur County west of Greensburg, Indiana (the “Project”).

2. Cobia is an Indiana limited liability company with its principal place of business at 7804-C Fairview Road, #257, Charlotte, NC 28226 and Indiana address at 525 S. Meridian Street, Suite 2B, Indianapolis, IN 46225.

3. Cobia is a subsidiary of Geenex Solar LLC (“Geenex”). Geenex is a leading national developer of early-stage greenfield utility-scale solar projects in the United States. Geenex has or has had an ownership interest in, and is currently involved in developing twenty-eight (28) solar generating facilities in the Midwest, six (6) of which are in Indiana. Geenex has

significant experience developing renewable energy projects and in expanding the use of renewable energy throughout the United States.

4. Decatur County has enacted its Zoning Ordinance, including specifically Article 20 – Solar Energy Facilities (“Zoning Ordinance”).

5. The Zoning Ordinance permits Solar Energy Systems in Agricultural zoning districts as Special Exceptions.

6. Consistent with the Zoning Ordinance, Cobia seeks to construct the Project on various parcels of real estate in Decatur County zoned as Agricultural. Cobia secured those parcels through private leases, easements, and options to purchase.

7. Cobia submitted its Application on August 30, 2024 (“Application”). Cobia’s Application was comprised of three (3) volumes of submission documents, supporting exhibits and third-party reports and deliverables, totaling twenty-eight (28) separate and distinct submission documents and over 5,600 pages of materials.

8. In the ensuing months, the BZA held three (3) different hearings on November 6, 2024, June 2, 2025, and August 6, 2025 during which Cobia presented substantial evidence on each special exception element supporting the Project (each a “Hearing”; collectively the “Hearings”).

9. Before each Hearing, Cobia submitted supplemental documents and deliverables in support of its Application and staffed the Hearings with numerous internal staff and third-party professionals and subject-matter experts.

10. In the intervening months between the Hearings, Cobia met with multiple groups of county officials in-person and virtually on numerous occasions to work on various aspects of the Project and to negotiate definitive agreements to cover myriad aspects and obligations of the

Project including, without limitation, decommissioning, road use, emergency services, training and equipment, use of local labor and materials, drainage, County rights-of-way, screening, buffering, agricultural preservation, topsoil, erosion control, stormwater management, agrivoltaics, sheep grazing, pollinators, vegetation management, environmental monitoring, construction standards, and crop restoration.

11. At the conclusion of the August Hearing, the BZA voted on the Application, with stipulations that the vote would be subject to certain conditions and agreements between Cobia and Decatur County including an Economic Development Agreement, Road Use Agreement, Decommissioning Agreement, Master Agricultural Preservation Agreement, Fire Safety and Emergency Response Agreement, Conditions and Requirements of the Tech Review Report dated May 28, 2025, Decatur County Zoning Ordinance, Decatur County Stormwater Management Ordinance, and recycling of removed panels.

12. The BZA denied the Application.

13. The BZA later issued written Findings of Fact as to its denial. The Findings of Fact and the Voting Ballots are attached to this Petition as Exhibit A and Exhibit B, respectively.

14. There was no substantial evidence presented at the Hearings that the Project did not meet all requirements under the Ordinance, and the supposed “evidence” presented in opposition to the Project was either irrelevant to the special exception elements, unsubstantiated, and/or speculative.

15. The BZA nevertheless voted 5-0 to deny Cobia’s Application.

16. In reaching its decision and issuing its Findings of Fact, the BZA committed errors and abused its discretion.

17. For example, in reaching its decision and issuing its Findings of Fact, the BZA improperly relied on speculation, conjecture and unsupported opinions founded on unreasonable and irrational animus towards renewable energy sources rather than the actual testimony and evidence presented. By way of example only:

- a. The finding that “concern” and “uncertainty” were expressed regarding development and improvement of surrounding properties and the change to value of properties was arbitrary and capricious and not supported by substantial evidence.
- b. The finding that additional traffic is “likely” based solely on “reference” to one other unrelated project was arbitrary and capricious and not supported by substantial evidence.
- c. A finding that while “concerns are currently unknown,” there “will be situations” that “could impact the community” in the areas of excessive production of traffic, noise, smoke, dust, fumes, glare or odors was arbitrary and capricious and not supported by substantial evidence.

18. Additionally, in its Findings of Fact, the BZA improperly found that the Comprehensive Plan did not support the development of commercial alternative energy facilities that would consume agricultural land despite the fact that the Ordinance specifically permits special exemptions for development of commercial Solar Energy Systems in Agricultural zoning districts.

19. Upon information and belief, the BZA’s Decision was decided without observance of procedure required by law and was not based on a fair and impartial hearing based on the evidence of record.

20. The BZA also made no findings at all on whether the Project will be served adequately by essential public facilities and services.

21. The BZA arbitrarily and capriciously denied Cobia's Application without any rational basis, leading Cobia to file this Verified Petition for Judicial Review.

22. The BZA's Decision was decided without observance of procedure required by law and was not based on a fair and impartial hearing based on the evidence of record.

23. The BZA's Decision was contrary to the evidence before the BZA and Indiana law.

### **THE PETITION IS TIMELY**

24. This Verified Petition for Judicial Review is timely because it is filed within thirty (30) days after the date the BZA made its decision on August 6, 2025. Indiana Code § 36-7-4-1605.

### **MAILING ADDRESSES**

25. Cobia's mailing address is c/o Ms. Micah Cooper, Esq., General Counsel, Cobia Solar LLC, 7804-C Fairview Rd., #257, Charlotte, NC 28226.

26. The BZA's mailing address is 150 Courthouse Square, Greensburg, IN 47240.

### **PARTICIPANTS AT THE BZA HEARINGS**

27. Upon information and belief, the persons<sup>1</sup> who participated in the Hearings, as described in I.C. § 36-7-4-1603(a)(2), are: Nancy Stuehrenberg, Joan Greier, Eric Stuehrenberg, Paul Z. Riedrer, Steve Gunn, Joe Rudema, Dennis Tebbe, Carol Tebbe, Sheila Kirchhoff, Adam J. Stein, David J. Scott, M. Heger, L. Heger, Randy Hoeing, Matt Navarra, Jan Moore, Mona Hahn, Pat Hahn, Jeff Deck, Scott Smith, Susie Loyd, Sabrina Allen, Brian Wenning, Todd Mauer, Beth

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<sup>1</sup> Some individuals did not provide full names or their writing was not legible. The list provided is Cobia's best effort to reproduce the names as they appeared on the sign in sheets provided by the BZA.

Smiley, Tim Hines, Mary Solada, Paul Wyman, Nick Kirkland, Erica Hakins, Micah Lohrum, Marilyn Baker, Larry Baker, Bonnie Robbins, Cheryl Daltz, Ellen Gauck, Dorothy Stark, Lori Garringer, Susi Dean, Fritz P. Reuff, Anne Wolters, Bob Wolters, Rose Wolters, Sharon Myers, Mike Myers, Sal Tory, Christina Fogg, Nancy Fogg, Aaron Fogg, Brad Schutte, Dave Holtkamp, Irene Moore, Lydia Moore, Molly Speer, Marybeth Herbert, Randy Herbert, Sarah Rohls, Sharon Nobbe, Melinda Nobbe, Scott Rohls, Scott A. Sanders, Sandy Nieman, Larry Nieman, Gordon Smiley, Nicole Scheidler, Michael Scheidler, Jennifer McNealy, Jeff McNealy, Merrily Muckerheide, Bill Muckerheide, Arden Muckerheide, Hudson Muckerheide, Vicky Fee, Bill Fee, Jenny Harter, Rod Schkimm, Joyce Schkimm, Jim M. Jater, Dan Watler, Denise Watler, Danu Wilson, Monique Wilson, Joyce Brindley, Bridgets, Jason Kirchhoff, Michael T. Luchucker, Amanda Bedel, Allen Bedel, Rita Wilmer, Dan Hall, Robby Grimes, Mark Bokelman, Rodger Fenley, Patty Lange Fischer, Janey Livingston, Connie Neininger, John Williams, Tom Richardson, Linda Nobbe, Robert Nobbe, Trent Swartzentruber, Dale Helmelt, R. Allen, Dory Ketzer, Alex Hellmich, Leon Nobbe, Scott Riler, Linda Oliver, Val C. Oliver, Sandy Profitt, Carrie Somers, Herb Somers, B.L.O., Garrett Schwering, Dawn Schwering, Brian Schwering, John Kirchhoff, Brian French, Julie Kirchhoff, Jason Kuchmay, Greg Gault, Becky Gault, Ann Lindsay, Kaywin Lindsay, Denise Zeigler, Hunter Jones, Paul Corya, H.M.M, Matt Mobley, Laura Swango, Travis R. Hardesty, Morgan D. Hardesty, Hollie Payton, James Payton, Jessica Harmeyer, Joe Harmeyer, Bill Rethlake, Bryan Roler, Bill Obermeyer, Richard L. Johnson, Erin Kessens, Amy Kessens, Isaac Kessens, Daryl Tressler, Scott S., Darrel Stert, Sarah Brewsaugh, Sam Shirk, Kyle Lowery, Kim Owsley, Kyler Blumenkamp, Bodhi Lowery, Willow Lowery, Tim McNealy, Dan Schroer, Jeni Smith, Dena Hasler, Linda S. McNealy, Dustin White, Charles Senenes, Ken Stier, Steve Stier, Dave Schneider, Debbie Schneider, James Everett, Phillys

Wercher , Connie Wercher, Chris Ramey, Andy Reiger , Laura Reiger, Gracie Reiger , Toell Howel, Briana Schroeder, Cierra Caudill, Holly Hunt, Tim Koors , Lee Lewellen, Wallace Turner, Sheena Turner, Matthew Neumann, Pam Crowsley, Jeremy Pasel, Alan Ander, Dave Foster, Jim Schutte, Dan Cathey, Jack Cathey, Ron Moore, Dorris Richey, Max Richey, Jim Williams, Donna Shirk, Roland Shirk, Greg Navarra, Bill Metz, Dany Peter, Tara Kirchhoff, Justin Kirchhoff, Emily Wilson, Nick Wilson, Brent George, Paula Fester, Dave Frensemeier, Carol Frensemeier, Christopher Fogle, Toni Kellems, Grant Rueff, Carl A. Riedeman, Alan Lowe, Kristy Lowe, Larry L., Jay Schoettmer, John Trenkamp, Lindsey Trenkamp, Rick Wilson, Hencil S., Christy F., Sam Overly, Van T., Rich Kirkland, B. Franck, Barry R., Mike Bokelman, Christy Bokelman, Brian Hastings, Lori Hastings, Greg Westrup, Marilyn Hoeing, Kris Sebo, Jerry Sebo, Nick Wenning, Scott Brewsaugh, Kevin Meek, Lori White, Linda Volk, Andrew Reiger, Drew Reiger, Mike Kirchhoff, Barb Spencer, DJ Sweet, Tennile Sweet, Richard Berkemeier, Wayne DeLong, Shelly Knecht, Keith Knecht, L. Rueff, Lawrence J. Young, Dan Wilson, Greg Nieman, Debbie Navarra, William Fenley, Amy Schene, Erica Evans, Jae Riedeman, Darci Stewart, Jim Lanning, James Evans, Harold Wilson, Lester Gurley, Mike Stokes, Michael Dora, Ted White, Doug Pittman, David Schaetz, Bill Wilmer, James Nelson, Daniel Straka, Valerie Hayes, Susie Coyle, Linda Bruns, Bert Bruns, Anna Deck, Jerry Nobbe, David Hall, Danny Ramsey, Helen Ramsey, Jeffrey Pryshy, Lindsey White, Danny Nobbe, LeaAnn Nobbe, Robert Pumphrey, David Bruns, Lisa Bruns, Leonard Sheetel, Theresa Nelson, Scott Schretz, Steve Schretz, Rod Ally, Michelle Daily, Greg Daily, Ethan Daily, Amanda C., Jim H., Anna-Marie Williams, Rachel Conner, M. Wentzyl, John Crowe, Jerid Sullivan, Allyson Sullivan, Patti Tatman, Gail I. Ward, Linda White, Velma Meyer, Jeff Smiley, Andrew Stewart, Allison Rohls, Donny de Castro, Ben Harvey, Charles Nats, Aron Caudill, Baron Deck, Joni Smith, C.C., Kathy Bennett, Danny Smith, Ginger Webb, David

Webb, Scott Pumphrey, Jim Pumphrey, Lara VanValkenburg, Barbara Bailey, Jeff Bailey, Sarah Graue, Patrick Graue, Phyllis Rollins, Jeff Moore, Sandra Greiwe, Thomas Greiwe, Nancy Herbert, Don Butz, Kathy Butz, Teresa Hull, Diane Armand, V. Albert Armand, Heidi Nicholson, Jamie Pritchett, L. Nicholson, Robert W. Lee Jr., Neil Buchanan, Trish Buchanan, Susan M. Veerkamp, Julie Hasselbring, Joan Underhill, Bill Underhill, Peggy Israel, Eugene F. Crabill, Thoams Rabaey, Anna Rabaey, Heath Dillon, John Wiseman, Jerry Wiseman, Jill Gunter, Christina Claycamp Yarling, Dakota Yarling, M. Priditis, Kim B., Tom Wormer, Michael Colson, Abby Colson, James Pascal, M. Smith, J. O'Brien, Joe Hayes, Natalie Russell, Noah Werner, Kimberly Redmon, Scott Andrew, Scott Glauber, Karin Farr, Larry Mauer, David Oliver, Danny Ralston, Paul Turner, Mark Arhitz, Robb Parents, James Parents, Ron Delhagen, Michael Archebold, Matt Huckleby, Andrew Horwath, Jared Hasselbring, Gary Townsend, Matt Eckerle, Kathi Corya, Greg Clapp, D. Willis, Jennifer Wilmer, Billy Wilmer, Denise Wirrig, Dave Wirrig, Tim Brown, Steve Brown, Aidan Brown, Travis Schoettmer, Jennifer Schoettmer, Michael Schneider, Nicole Schneider, Brad McCarter, Jane Obermeyer, Nick Nobbe, Hannah Nobbe, Nan W. Ferry, Haley Reiger, Ann Speel, Danny Brown, Bob Waters, Jon Mitchell, Susan Robbins, Scott Allen, and Steve Herbert.

28. There may be other persons described in the above statute whose identity cannot be determined until preparation of the complete Record of the Proceedings. Cobia reserves the right to amend this Petition to include such persons upon completion of the Record of the Proceedings.

### **VENUE**

29. Venue is proper in this Court because land affected by the BZA's zoning decision is located in this judicial district. I.C. § 36-7-4-1606(a). Similarly, this Court is the preferred venue pursuant to Trial Rule 75(A)(8).



### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

30. Cobia has exhausted all administrative remedies and is entitled to file this Petition pursuant to I.C. § 36-7-4-1604.

### **STANDING**

31. Cobia has standing to obtain judicial review of the BZA's Decision as the applicant to whom the BZA's Decision is specifically directed and is aggrieved by the decision. I.C. § 36-7-4-1603.

### **BASIS FOR OVERTURNING THE BZA'S DECISION**

32. The BZA's denial of Cobia's Application is arbitrary and capricious because Cobia met the requirements necessary to obtain a Special Exception and the Project complies with the Ordinance as supported by the substantial evidence submitted on behalf of the Project.

33. The BZA had no rational basis for denying the Application, and the denial is not supported by substantial evidence. To the contrary, substantial evidence supported the Application's approval. The BZA's Decision was decided without observance of procedure required by law and was not based on a fair and impartial hearing based on the evidence of record.

34. The BZA erroneously concluded—in direct conflict with the plain language of its own Zoning Ordinance—that the proposed use would “substantially interfere” with the Comprehensive Plan when the Zoning Ordinance specifically authorizes the use.

35. The Indiana Court of Appeals has dealt with this exact issue and found that when a zoning ordinance explicitly contemplates a certain use it is inconsistent for a BZA to deny a special exception on the grounds that the proposed use is inconsistent with comprehensive plan. *Tipton Cnty. Bd. of Zoning Appeals v. Hope for the Hurting*, 230 N.E.3d 322, 333 (Ind. Ct. App. 2024) (“We agree with the trial court's statement that ‘[p]erhaps the best evidence that operating a Social

Rehabilitation Center is consistent with the Comprehensive Plan is the [O]rdinance itself, which has long allowed such use as a special exception under the zoning ordinance.”)

36. The only ‘evidence’ supporting the denial was unfounded community fears and speculation. This is arbitrary and capricious and entitles Cobia to reversal and granting the special exception.

37. Although the feelings of landowners are relevant, a zoning determination is not controlled by “public sentiment” and instead must be based on evidence properly submitted. *Ripley Cnty. Bd. of Zoning Appeals v. Rumpke of Indiana, Inc.*, 663 N.E.2d 198, 205 (Ind. Ct. App. 1996); *Bd. of Comm'rs of Cnty. of Vanderburgh v. Three I Properties*, 787 N.E.2d 967, 974 (Ind. Ct. App. 2003).

38. “The comments voiced by remonstrators during the hearing about their beliefs and concerns against granting [the project] the special use exception do not amount to evidence upon which a reasonable mind would rely.” *Tipton Cnty. Bd. of Zoning Appeals v. Hope for the Hurting*, 230 N.E.3d 322, 331–32 (Ind. Ct. App. 2024).

39. BZAs are strictly prohibited from “elevat[ing] fear and bias to the level of evidence.” *Id.* at 332.

40. “[H]yperbole and conjecture have no basis in fact and do not amount to substantial evidence sufficient to support [a] BZA's denial [of a special exception].” *Id.* at 333.

41. BZAs cannot deny a request for a special use exception “based on a catalogue of speculative and hypothetical dangers” from nearby residents. *Id.*

42. When a decision is based solely on speculative fears from the community, the BZA’s decision will be overturned. *See Tipton Cnty. Bd. of Zoning Appeals v. Hope for the Hurting*, 230 N.E.3d 322, 333 (Ind. Ct. App. 2024) (affirming trial court that reversed BZA denial of special

exception that was arbitrary and capricious and not based on substantial evidence where the denial was based on irrational animus toward the petitioner and the project); *Porter Cnty. Bd. of Zoning Appeals v. SBA Towers II, LLC*, 927 N.E.2d 915, 925 (Ind. Ct. App. 2010) (affirming trial court that reversed BZA denial of special exception that was not based on substantial evidence); *Lockerbie Glove Factory Town Home Owners Assoc', Inc. v. Indianapolis Historic Pres. Comm'n*, 106 N.E.3d 482, 487 (Ind. Ct. App. 2018) (finding that a decision is arbitrary and capricious if it is “patently unreasonable” and “made without consideration of the facts”).

43. The BZA’s Decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Ind. Code § 36-7-4-1614(d)(1). The BZA’s Decision was “unsupported by substantial evidence.” Ind. Code § 36-7-4-1614(d)(5).

44. The BZA’s Decision was “short of statutory right” and “without observance of procedure required by law”. Ind. Code § 36-7-4-1614 (d)(3)-(4).

45. Specifically, a member(s) of the BZA was biased and therefore the BZA’s Decision was not based on a fair and impartial hearing based on the evidence of record.

46. Upon information and belief, a member(s) of the BZA may have attended meetings held by opponents of the Project and may have communicated with same and considered information from same that was outside the record and not subject to examination by Cobia. Furthermore, the member(s) may have shared such information with other members of the BZA.

47. The BZA’s Decision prejudices Cobia because it prevents Cobia from constructing the Project, for which it has invested significant time, money, effort, and resources over a number of years.

### **REQUEST FOR COMPLETE RECORD FOR JUDICIAL REVIEW**

48. Pursuant to Ind. Code § 36-7-4-1613(a), Cobia requests that the BZA prepare and certify a copy of the BZA's Record of the Proceedings for judicial review and deliver the record to Cobia's counsel so that Cobia can transmit it to the Court within thirty (30) days after filing this Verified Petition for Judicial Review. If the BZA fails to timely transmit the BZA's record to Cobia's counsel, Cobia reserves the right to request an extension of time to file the BZA's record with the Court.

### **PRAYER FOR RELIEF**

WHEREFORE, Cobia Solar LLC, by counsel, respectfully requests that the Court provide the following relief (in various alternatives):

- i. Order the BZA to certify to the Court the entire BZA Record of the Proceedings for judicial review;
- ii. Order that Cobia may amend its Verified Petition for Judicial Review once it is provided a copy of the BZA's Record of the Proceedings;
- iii. Set a pretrial conference to establish deadlines for filing briefs and presenting argument to the Court on the issues raised in this Verified Petition for Judicial Review; Find that a prima facie case of "unlawfulness of procedure or of decisionmaking process" pursuant to Ind. Code § 36-7-4-1612 entitles Cobia to (1) conduct discovery and (2) submit additional evidence to the Court; and (3) establish procedures for same;
- iv. Find that Cobia has been prejudiced because the BZA's denial of its Application for Special Exception was contrary to law;

- v. Find that Cobia has been prejudiced because the BZA's denial was "short of statutory right" and "without observance of procedure required by law";
- vi. Find that Cobia has been prejudiced because the BZA's denial of its Application for Special Exception was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law";
- vii. Find that Cobia has been prejudiced because the BZA's denial of its Application was "unsupported by substantial evidence";
- viii. Reverse and overturn the decision of the BZA and remand this case to the BZA with instructions to approve Cobia's Application for Special Exception; and/or
- ix. Grant Cobia all other just and proper relief in the premises.

## VERIFICATION

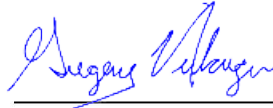
I affirm, under the penalties for perjury, that the foregoing representations are true.

COBIA SOLAR LLC

By:   
Emily Williams (Sep 4, 2025 11:20:47 PDT)

Emily Williams, Authorized Representative

Respectfully Submitted,



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