

**STARKE COUNTY COMMISSIONERS
RESOLUTION 2021- 006**

**EXPRESSION OF OPPOSITION TO HB 1381
AND STATE PREEMPTION OF LOCAL
GOVERNMENTAL CONTROLS OF COMMERCIAL
SOLAR AND WIND POWER INSTALLATIONS**

WHEREAS, the State of Indiana encompasses many communities, including rural landscapes, small towns, suburbs, and cities, as well as a diversity of lands of widely varying characteristics, all with a myriad of current uses and potential future uses; and,

WHEREAS, local governmental units throughout Indiana, including Starke County, have invested in, developed, and implemented master plans, and planning and zoning rules and regulations carefully crafted to harmonize with the unique mixture lands within their jurisdiction and the people who live and work there; and,

WHEREAS, like many of these locally created and implemented plans, those in effect in Starke County include specific rules and standards for commercial solar and wind power installations and related facilities; and,

WHEREAS, the current locally created and implemented plans and regulations regarding commercial solar and wind power installations and related facilities in Starke County were instituted pursuant to well-established local authority over planning, zoning and land use; and,

WHEREAS, the current locally created and implemented plans and regulations regarding commercial solar and wind power installations and related facilities in Starke County

offer developers of such projects ample latitude to pursue such projects within Starke County; and,

WHEREAS, commercial solar and wind projects often occupy large tracts of land and therefore have substantial impacts on local economies, future development opportunities, the viability and desirability of neighborhoods, local roads and communications, and may impact drainage, hydrology and the quality of life for residents, and therefore management of these installations is (or is likely to become) a critical element of local planning and zoning; and,

WHEREAS, House Bill 1381 (HB1381) is currently pending in the Indiana General Assembly, and if enacted would exercise state preemption over all locally created and implemented zoning, planning, and land use authority and as such would constitute a disenfranchisement of Starke County citizens, depriving them of any ability to determine or meaningfully influence the sites of commercial solar and wind energy projects, and the conditions of such developments.

WHEREAS, if enacted, HB 1381 communities throughout Indiana would be compelled to accept commercial solar and wind power installations designed, installed, and operated by persons with no connection to their community, and without regard to local zoning and planning; and,

WHEREAS, the Board of Commissioners of Starke County, Indiana, hereby expresses its opposition to HB 1381. By this resolution, the Commissioners do not express categorical opposition to commercial solar and wind power installation in Starke County or elsewhere, but solely their opposition to state legislation having the effect of preempting the rights of persons and families living in a community to meaningfully participate in their future through planning, zoning and land use decisions.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF STARKE COUNTY, INDIANA that the Board expresses its opposition of HB 1381 and any other legislation that would preempt local authority over planning and land use decisions within their own community.

ALL OF WHICH IS HEREBY RESOLVED AS A FORMAL EXPRESSION OF POLICY BY STARKE COUNTY GOVERNMENT by the BOARD OF COMMISSIONERS OF STARKE COUNTY, and approved on this 5th day of April 2021 by the following vote:

Board of Commissioners of Starke County, Indiana

VOTE

yes



Charles Chesak, *President*

YES



Bryan Cavender, *Vice President*

YES



Mark Gourley, *Member*

ATTEST:



Rachel Osterreich, *Auditor*
Of Starke County Indiana

Portion of Parcel:75-11-18-300-015.000-008

COMMITMENT

Commitment made on February 1, 2021, by Starke Solar LLC by, Nick Cohen, authorized agent (the "Petitioner") pursuant to Indiana Code Section 36-7-4-1015.

1. Petitioner makes this commitment with the knowledge and consent of Swanson Farms LLC who is the owner (the "Owner") of certain real estate (the "Real Estate") located in Starke County, Indiana, commonly known as Parcel 75-11-18-300-015.000-008 and more particularly described on Exhibit A which is attached hereto and incorporated by reference herein.

1. Petitioner has filed a request (with the consent of the Owner) with the Area Plan Commission of Starke County, Indiana (the "APC"), to rezone the Real Estate from R2 to AG which request is pending before the Commissioners of Starke County.

2. Petitioner hereby agrees and makes the following commitment in connection with the rezoning request in the rezoning of Parcels 75-11-18-400-016.000-008,75-11-19-100-001.000-008, 75-11-19-200-002.000-008, 75-11-19-200-003.000-008:

Petitioner shall not construct solar panels in areas designated on Exhibit B.

3. Petitioner understands and agrees that this commitment is given to the APC and the Board of Commissioners of Starke County (the "Legislative Body") as an inducement for the recommendation for and approval of the rezoning request. Petitioner further understands and agrees that the approval of the rezoning request in this case by the Legislative Body constitutes good and valuable consideration for the giving of this commitment.

4. This commitment shall be a covenant running with the Real Estate and binding and enforceable against Petitioner, any subsequent owner, or any other person who acquires any interest in the Real Estate. Any change or modification of this commitment shall only be made with the approval of the APC at a public hearing in accordance with all rules and regulations of the APC.

5. Petitioner agrees that each of the following shall each be a "specially affected person" under Indiana Code Section 36-7-4-1015(d)(3) who shall each independently be entitled to

bring an action to enforce the terms and conditions of this commitment in the Circuit or Superior Courts of Starke County, Indiana:

- a. the APC,
- b. the Area Board of Zoning Appeals of Starke County, Indiana,
- c. the appropriate Administrative Officer designated in the Starke County Zoning Ordinance,

STARKE SOLAR LLC

By: *Nick Cohen*
Nick Cohen, Authorized Agent

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE)

Before me, the undersigned, a notary public, personally appeared Nick Cohen, Authorized Agent of Starke Solar LLC, and acknowledged the execution of the foregoing commitment on MARCH 12, 2021.

Melisa M Brooks
_____, notary public
Resident of _____ County

My commission expires:



MELISA M. BROOKS
Resident of Tippecanoe County
My Commission Expires
April 6, 2023

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Christopher D. Shelmon

This instrument prepared by: Christopher D. Shelmon of Gutwein Law, 250 Main Street, Suite 590, Lafayette, IN 47901; Telephone: 765.423.7900

EXHIBIT A

The Southeast Quarter (SE ¼) of the Southwest Quarter (SW ¼) of Section 18, Township 32 North, Range 1 West of the 2nd P.M., Starke County, Indiana. Consisting of 40 acres, more or less.

EXHIBIT B

Swanson Rezoning Requested



Portion of Parcel: 75-10-24-400-002.000-002

COMMITMENT

Commitment made on February 1, 2021, by Starke Solar LLC by, Nick Cohen, authorized agent (the "Petitioner") pursuant to Indiana Code Section 36-7-4-1015.

1. Petitioner makes this commitment with the knowledge and consent of Welker Ag Properties LLC who is the owner (the "Owner") of certain real estate (the "Real Estate") located in Starke County, Indiana, commonly known as Parcel 75-10-24-400-002.000-002 and more particularly described on Exhibit A which is attached hereto and incorporated by reference herein.

1. Petitioner has filed a request (with the consent of the Owner) with the Area Plan Commission of Starke County, Indiana (the "APC"), to rezone the Real Estate from R2 to AG which request is pending before the Commissioners of Starke County.

2. Petitioner hereby agrees and makes the following commitment in connection with the rezoning request in the rezoning of Parcels 75-10-24-400-002.000-002,75-11-19-300-0012.000-008,75-119-300-013.000-008:

Petitioner shall not construct solar panels in areas designated on Exhibit B.

3. Petitioner understands and agrees that this commitment is given to the APC and the Board of Commissioners of Starke County (the "Legislative Body") as an inducement for the recommendation for and approval of the rezoning request. Petitioner further understands and agrees that the approval of the rezoning request in this case by the Legislative Body constitutes good and valuable consideration for the giving of this commitment.

4. This commitment shall be a covenant running with the Real Estate and binding and enforceable against Petitioner, any subsequent owner, or any other person who acquires any interest in the Real Estate. Any change or modification of this commitment shall only be made with the approval of the APC at a public hearing in accordance with all rules and regulations of the APC.

5. Petitioner agrees that each of the following shall each be a "specially affected person" under Indiana Code Section 36-7-4-1015(d)(3) who shall each independently be entitled to

bring an action to enforce the terms and conditions of this commitment in the Circuit or Superior Courts of Starke County, Indiana:

- a. the APC,
- b. the Area Board of Zoning Appeals of Starke County Indiana,
- c. the appropriate Administrative Officer designated in the Starke County Zoning Ordinance,

STARKE SOLAR LLC

By: *Nick Cohen*
Nick Cohen, Authorized Agent

STATE OF INDIANA)
)
COUNTY OF TIPPECANOE)

SS:

Before me, the undersigned, a notary public, personally appeared Nick Cohen, Authorized Agent of Starke Solar LLC, and acknowledged the execution of the foregoing commitment on MARCH 12, 2021.

Melissa M Brooks

, notary public

Resident of _____ County

My commission expires:



MELISSA M. BROOKS
Resident of Tippecanoe County
My Commission Expires
April 6, 2023

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Christopher D. Shelmon

This instrument prepared by: Christopher D. Shelmon of Gutwein Law, 250 Main Street, Suite 590, Lafayette, IN 47901; Telephone: 765.423.7900

EXHIBIT A

The East half of the Southeast quarter of Section 24, Township 32 North, Range 2, West of the 2nd P.M.

EXHIBIT B

