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IN THE
COURT OF APPEALS OF INDIANA

Mammoth Solar, a/k/a Starke Solar LLC,

Appellant-Respondent

v.

Connie Ehrlich, Daniel Knebel, Jennifer Knebel, John Masterson, Larry Lambert, Gail Lambert, Keith Davis, Gale Davis, and Dean Cervenka,

Appellees-Petitioners.

September 21, 2022

Court of Appeals Case No. 21A-PL-2060

Appeal from the Pulaski Superior Court

The Honorable Kim Hall, Special Judge

Trial Court Cause No. 66D01-2009-PL-10

Pyle, Judge.

Statement of the Case

[1] In 2019, the Pulaski County Board of Commissioners ("the Commissioners") approved and adopted a Unified Development Ordinance ("the UDO") that provides a regulatory scheme for the construction and operation of solar energy systems in the county. In 2020, Mammoth Solar ("Mammoth Solar") submitted an application for a special exception ("the Application") seeking approval to construct a commercial solar energy farm on 4,511 acres of farmland in Pulaski County. Following a public hearing, the Pulaski County Board of Zoning Appeals ("the BZA") unanimously approved the Application. Petitioners Connie Ehrlich, Daniel and Jennifer Knebel, John and Toni Masterson, Larry and Gail Lambert, Keith and Gale Davis, and Dean Cervenka, (collectively "the Petitioners"), who either own property within 660 feet of the proposed solar farm, reside within one mile of the proposed solar farm, or have homes that will be bordered by the solar farm's panels, filed a petition for judicial review asking the trial court to enter an order reversing the BZA's decision and denying the Application. The trial court concluded that the Application had failed to comply with the minimum requirements of the UDO, that the BZA should not have considered or acted on Mammoth Solar's incomplete application, and, that by disregarding the UDO's requirements, the BZA's actions were arbitrary and capricious, not in accordance with the law, and without observance of procedure required by law. The trial court vacated all actions taken on Mammoth Solar's Application and remanded the matter to the BZA.

[2] Mammoth Solar now appeals the trial court's order. Mammoth Solar specifically argues that: (1) the Petitioners lack standing to challenge the BZA's approval of the Application; (2) the Petitioners did not timely transmit the BZA's record to the trial court; (3) the BZA's approval of the Application was not arbitrary and capricious; and (4) the Petitioners failed to demonstrate that they had been prejudiced by the BZA's approval of the Application. Concluding that: (1) the Petitioners have standing to challenge the BZA's approval of the Application; (2) the Petitioners timely transmitted the BZA's record to the trial court; (3) the BZA's approval of the application was arbitrary and capricious; and (4) the Petitioners have demonstrated that they were prejudiced by the BZA's approval of the Application, we affirm the trial court's judgment.[1]

[3] We affirm.

Issues

1. Whether the Petitioners had standing to challenge the BZA's approval of the Application.
2. Whether the Petitioners timely transmitted the BZA's record to the trial court.
3. Whether the BZA's approval of the Application was arbitrary and capricious.

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[1] We held an oral argument in this appeal via Zoom on June 7, 2022. We thank all counsel for their able advocacy.

4. Whether the Petitioners demonstrated that they had been prejudiced by the BZA's approval of the Application.

Facts

[4] In 2019, the Commissioners approved and adopted the UDO to set standards for development within Pulaski County.[2] The UDO became effective January 1, 2020. UDO section 7 concerns solar energy systems ("SES") and provides that "[t]he purpose of this section is to . . . [a]ssure that any development of and production of . . . solar-generated electricity in Pulaski County is safe and effective[.]" (Appellant's App. Vol 4. at 162). Section 7.5(A) provides that "permits and variances shall be applied for and reviewed under the procedures established by this UDO and the application procedures . . . for a[n] . . . SES Improvement Location Permit." (Appellant's App. Vol. 4 at 165). Section 7.5(A)(2) further directs the applicant to section 2.3(R) for the specific application procedures.

[5] Section 2.3(R)(1) sets forth the information that an application for any SES "shall include[.]" (Appellees' App. Vol. 3 at 5). Specifically, Section 2.3(R)(1) provides as follows:

R. Applications for All Solar Energy Systems

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[2] The UDO is available online at http://pulaskionline.org/wp-content/uploads/sites/4/2019/12/CountyUDO2020.pdf. (Last visited September 12, 2022).

1. An application for any SES *shall* include the following information:

a. Contact information of project applicant. The name(s), address(es), and phone number(s) of the applicant(s), as well as a description of the applicant's business structure and overall role in the proposed project.

b. Contact information of current project owner. The name(s), address(es), and phone number(s) of the owner(s), as well as a description of the owner's business structure (commercial SES only) and overall role in the proposed project, and including documentation of land ownership or legal control of the property on which the SES is proposed to be located. The Plan Commission shall be informed of any changes in ownership.

c. Contact information of project operator. The name(s), address(es), and phone number(s) of the operator(s), as well as a description of the operator's business structure (commercial SES only) and overall role in the proposed project. The Plan Commission shall be informed of any changes in operatorship.

d. Legal description. The legal description, address, and general location of the project.

e. Project description. A CSES Project Description including:

    1) Number of panels;
    2) Type;
    3) Name Plate generating capacity;

4) Maximum spatial extent (height and fence lines)[;]
5) The means of interconnecting with the electrical grid;
6) The potential equipment manufacturer(s); and
7) All related accessory structures.

f. Engineering Certification. For all SES, the manufacturer's engineer or another qualified registered professional engineer shall certify, as part of the building permit application, that all equipment is within accepted professional standards, given local soil and climate conditions. An engineering analysis of the equipment showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. The analysis shall be accompanied by standard drawings of the solar panel, including the base.

(Appellees' App. Vol. 3 at 5-6) (emphasis added).

[6] In addition, section 2.3(R)(3) sets forth the information that an application for commercial solar energy systems ("CSES"), such as that submitted by Mammoth Solar, "shall include[.]" (Appellees' App. Vol. 3 at 7). Specifically, section 2.3(R)(3) provides as follows:

3. Applications for Commercial SES (CSES). In addition to the application requirements listed in Section 2.3(R)(1), applications for CSES *shall* also include the following information:

a. A site layout plan. A Development Plan, drawn to scale, including distances and certified by a registered land

surveyor. All drawings shall be at a scale not smaller than one inch equals 200 feet (1"=200') and not larger than one inch equals 50 feet (1" = 50'). Any other scale must be approved by the Administrator. No individual sheet or drawing shall exceed twenty-four inches by thirty-six inches (24" x 36"). The plan should include the following:

1) address, general location, acreage, and parcel number(s) of subject property
2) names of subdivision in which property exists (if applicable)
3) location/key with north arrow
4) property dimensions
5) location of and distance to any substations or other means of connection to the electrical grid, including above-ground and underground electric lines, as well as a copy of the written notification provided to the electric company requesting interconnection
6) existing and proposed buildings and solar panels, with appropriate setbacks, parking areas, natural features, including vegetation (type and location) and wetlands, and other manmade features, including locations of any utilities, wells, drainage tiles, and/or waterways
7) Electrical cabling
8) Ancillary equipment
9) adjacent or on-site public or private streets/roads and alleys
10) existing and proposed ingress/egress
11) existing building setbacks and separation
12) delineation of all requested variant development standards (if applicable)
13) existing easements
14) approximate locations of neighboring uses and structures

15) brief description of neighboring uses and structures
16) existing and proposed landscaping, lighting, and signage
17) a fire protection plan for the construction and operation of the facility, including emergency access to the site[]
18) proof of correspondence and cooperation with wildlife agencies re[garding] endangered species[]
19) map scale
20) Dimensional representation of the structural components of the construction including the base and footings
21) Any other item reasonably requested by the Board of Zoning Appeals.
22) dated signature of applicant and owner

b. Topographic Map. A USGS topographical map, or map with similar data, of the property and the surrounding area, including any other CSES, flood plains or wetland within 1 mile, with contours of not more than five (5) foot intervals.

c. Copy of a Communications Study

d. The CSES applicant shall certify that the applicant will comply with the utility notification requirements contained in Indiana law and accompanying regulations through the Indiana Public Utility Commission.

e. Evidence of compliance with storm drainage, erosion, and sediment control regulations (Rule 5)[.]

(Appellees' App. Vol. 3 at 7-8) (emphasis added).

[7] In addition to the above sections governing applications for CSES, Section 2.2(E) of the UDO authorizes the Pulaski County Plan Commission ("the Commission") to designate "an Administrator [("the Administrator")] with the principal authority for implementing and enforcing [the UDO]." (Appellee's App. Vol. 2 at 126). Section 2.2(E)(2)(b)(4) grants the Administrator the authority to review and make recommendations on applications for special exceptions. In addition, Section 2.2(E)(2)(d)(1) grants the Administrator the additional power to "[e]stablish application content requirements and a submission schedule for review of applications and appeals." (Appellee's App. Vol. 2 at 127).

[8] Further, regarding applications for special exceptions, Section 2.3(P)(1) explains as follows:

> The special exception procedure is intended to consider uses that may be appropriate in a zoning district, but because of their nature, extent, and external effects require special consideration of location, design, and methods of operation before they can be deemed appropriate and compatible. The purpose of this section is to establish a mechanism to review special exception uses to ensure they are appropriate for a particular site and its surroundings. No special exception shall be authorized without the approval of the [BZA], in accordance with this section. Further, no decisions on previous applications shall serve to set a precedent for any other application before the BZA.

(Appellee's App. Vol. 3 at 2).

[9] In addition, section 2.3(P)(4) sets out the following special exception decision criteria:

> a. The proposed use is compatible with the current comprehensive plan for Pulaski County.[3]
>
> b. The location, nature and height of each building, wall and fence, the nature and extent of landscaping on the site and the location, size, nature, and intensity of each phase of the use and its access streets will be compatible with the appropriate and orderly development of the district in which it is located. Operations related to the use will be no more objectionable with regard to noise, fumes, vibration, or light to nearby properties than operations in permitted uses. The proposed use will not conflict with an (sic) existing or programmed public facilities, public services, schools, or roads.
>
> c. The proposed use would not likely have a negative impact on property values throughout the jurisdiction.
>
> d. Would the intended use for the special exception provide for the most desirable use for which the land in this zoning district is adapted?

(Appellees' App. Vol. 3 at 3) (footnote added).

[10] In June 2020, Mammoth Solar submitted the Application seeking approval to construct a CSES on 4,511 acres of farmland in Pulaski County. The

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[3] The Pulaski County Advisory Plan Commission adopted a Comprehensive Plan ("the Plan") in April 2009. The Plan's purpose is to serve as a guide for county officials and assist in balancing "potentially conflicting issues of land use growth, county services, economic enhancement, and environmental sensitivity while promoting an enhanced quality of life." (Appellant's App. Vol. 3 at 114). The Plan contemplates the use of renewable energy sources, including solar energy.

Application initiated the first phase of Mammoth Solar's three-phase plan to build and operate one of the largest CSES in the world. The CSES is projected to generate up to one gigawatt of electricity, which will service 80,000 people, and will require 12,000 acres for the completed project.

[11] The Application included Mammoth Solar's contact information and the signature of Mammoth Solar's representative, Nick Cohen ("Cohen"). The Application provided that the parcels of land composing the 4,511 acres, which were being used for agricultural production, would be predominately used for solar arrays and accompanied intermittently by access lanes and substations, as needed. According to the Application, the project would be landscaped with buffers as required by the UDO. The Application further noted that there were several rural residences in the vicinity of the project.

[12] In addition, according to the Application, its proposed special exception was compatible with the Plan, which set forth the goal of supporting access to solar energy. The Application further provided that Mammoth Solar's project would increase investment and economic development for Pulaski County in an orderly manner that encouraged economic growth while simultaneously diversifying its economy. According to the Application, the project would include native species and wildflowers, which would support the ecological system of the area. The Application further provided that the participating properties would be returned to farm ground if the project were ever to be taken out of service.

[13] In addition, the Application provided that Mammoth's Solar's project was the most desirable use for the land because it provided a sustainable, necessary service for the community. Further, according to the Application, the project would have a positive impact on property values for many properties throughout the jurisdiction and the project would increase investment and economic opportunities throughout Pulaski County, making it an even more desirable location. The Application further provided that Mammoth Solar's project would add to the overall infrastructure of Pulaski County and would have a negligible impact on existing public services and roadways.

[14] Mammoth Solar included in the Application a list of property owners who had agreed to lease parcels of land to Mammoth Solar and copies of the signature pages of those leases. According to Mammoth Solar, it also submitted with its Application a site plan, which included the type of solar panels to be used, the number of solar panels proposed, and the location and configuration of the panels. Apparently, these items were submitted to the BZA in a demonstrative format and were, therefore, omitted from the paper record submitted to the trial court.

[15] Following the June 2020 submission of Mammoth Solar's Application, the BZA scheduled the Application for a public hearing in July 2020. At the hearing, Cohen, who had filed the Application on behalf of Mammoth Solar, spoke to the attendees about the proposed CSES and the creation of jobs. Another Mammoth Solar spokesperson opined that the CSES would not have a negative impact on property values. According to the spokesperson, "solar isn't

an offensive neighbor." (Appellant's App. Vol 5 at 58). Also at the hearing, a first responder asked if there would be training regarding the firefighting techniques used in solar farms because "[w]ater and electricity do not mix." (Appellants' App. Vol. 5 at 67). The first responder further pointed out that, in California, a single bird flying into two wires had caused a fire, which had resulted in eight to nine million dollars in damages and the disablement of eighty-four percent of the solar farm's generating capacity. According to the first responder, a California fire battalion chief had stated that incidents like that happened regularly. Cohen responded that coordination with local emergency response services "usually takes place later on in the development." (Appellants' App. Vol. 5 at 68).

[16] Also at the public hearing, there was discussion regarding the manufacturing location of the solar panels that would be used in the CSES. Mammoth Solar admitted that it did not know if the panels would be manufactured in the United States because that was a determination to be made during the design phase of the project. At the end of the hearing, one of the BZA members stated that she needed more time to think about the proposed CSES before voting on the Application. The BZA agreed to continue the hearing for thirty days to gather more information about environmental, health, ecological, and wildlife concerns.

[17] At the August 2020 hearing, Michael MaRous ("MaRous"), an Indiana licensed real estate appraiser, spoke on behalf of Mammoth Solar regarding the impact of a CSES on property values. According to MaRous, he had reviewed

ten solar projects throughout the Midwest and found that the solar projects had not negatively impacted property values. However, MaRous also acknowledged that none of the projects that he had reviewed were as large as Mammoth Solar's proposed project.

[18] Craig Stevenson ("Stevenson"), a Pulaski County real estate agent specializing in rural homes, recreational land, and farmland, submitted to the BZA a report on "Large Scale Solar Panel Farm's Impact on Real Estate Values." (Appellees' App. Vol. 2 at 89). In this report, Stevenson opined that rural homes would see a decline in value. According to Stevenson, homes within sight of the solar panels would be the most negatively impacted. Stevenson further explained that "[h]omes that you cannot see the panels from but can hear the noise generated by the panels will be impacted to a lesser degree." (Appellees' App. Vol. 2 at 89). According to Stevenson, "[t]here are also reports suggesting the potential for health concerns. Regardless of whether it is true or not, some buyers will avoid living around the solar farm panels." (Appellees' App. Vol. 2 at 89). Stevenson further explained that the same issues that impacted rural homes would impact recreational land, which is used primarily for hunting, camping, and future home sites. In addition, Stevenson opined that local farmers who chose not to lease their land to the solar panel company would be negatively impacted because they would be at a competitive disadvantage when it came to bidding on farmland to buy or rent.

[19] Denise Spooner ("Spooner"), a licensed real estate broker in Indiana, spoke in opposition to the proposed CSES. Spooner had conducted six months of

research regarding the economic impact of a proposed solar farm in Madison County, Indiana. Spooner's report, which she tendered to the BZA, revealed a negative impact on property values and concluded as follows:

> Based upon the studies we have, the Real Estate agents' statements, and the sale in Madison County accompanied by the Buyer's statement, the projections for a 100MW solar plant or larger are:
>
> > Any homes surrounded on 3 or 4 sides will be worth nothing.
> >
> > Any homes affected on 2 sides will suffer an estimated loss of 40%. The loss will be greater if the setback is minimal, aesthetic views are chainlink [and] barbed wire, noisy inverters are near to homes, [and] there are no berms or mature trees or natural wood fence to help the views and block the industrial ugliness.
> >
> > Homes within a one[-]mile radius of 100MW or greater will suffer an estimated loss of 10%-40% depending on the size of the MW and the aesthetic views.
> >
> > Homes within a three[-]mile radius of 100MW or greater will suffer an estimated [loss of] 10%-20% depending on the size of the MW and the aesthetic views.

(Appellees' App. Vol. 2 at 99).

[20] Spooner also pointed out that one of the largest solar panel production companies in China was involved in a lawsuit regarding the chemicals in the solar panels and the contamination that they had allegedly caused. After Spooner had spoken, there was an additional discussion about Mammoth Solar's lack of a fire safety plan.

[21] Following the second hearing, the five members of the BZA unanimously voted to approve the Application. In support of its approval, the BZA subsequently issued five pages of findings of fact and four pages of conditions and commitments, which were attached to the findings of fact. (Appellant's App. Vol. 5 at 178). In its findings, the BZA found that "[w]ithin the proposed footprint of the project, approximately 220 houses are within one mile of the proposed site." (Appellant's App. Vol. 5 at 180). In addition, the BZA concluded that although "[i]t [was] undeniable and unavoidable that a significant number of these 220 homes, if not more, w[ould] see a decrease in property values,]" the aggregate impact on property values would likely be positive. (Appellant's App. Vol. 5 at 180). In support of its conclusion regarding the aggregate positive impact of the solar farm on property values, the BZA cited to two studies. One study conducted in Illinois concluded that nearby solar farms minimally affected property values in the positive. The other study, which had been conducted in the Midwest, concluded that "[e]stimated property value impacts at all distances and sizes had a median and a mode of zero percent." (Appellant's App. Vol. 5 at 180). The BZA noted that "[i]t was important to note that [the projects in the studies were] dramatically smaller than the proposed footprint of the project in question" and there were no studies available on the impact of projects of Mammoth Solar's magnitude. (Appellant's App. Vol. 5 at 180).

[22] The conditions attached to the BZA's findings included limits on the volume of sounds emanating from the site, the inclusion of screening elements and low-

growing native perennials on the site, the requirement for a drainage agreement, coordinated safety planning with local fire departments, and the preference of American-made solar-energy equipment. The non-exhaustive list of commitments attached to the BZA's findings included a property-value guarantee ("the PVG") for presently constructed structures within one mile of a parcel upon which a solar-energy site would be built. According to the terms of the PVG, the property owner had to apply to participate in the PVG program. If the property owner's application was accepted, the owner's property would be appraised at the time of the owner's registration in the PVG program. If at the time of sale, the property owner was unable to secure a sale price equal to the appraisal, Mammoth Solar would reimburse the property owner for the difference between the appraised price and the final sale price. If the property owner received no offers on the property within twelve months, due to no fault of the property owner, Mammoth Solar would purchase the home at the originally appraised price. In addition, the PVG would expire twelve years after the start of construction of the solar site nearest to the owner's property. Further, the PVG would only apply to the original applicant-owner. Persons who purchased the structure knowing that a CSES would be developed, was under development, or was operational would not be eligible for the PVG.

[23] In September 2020, the Petitioners filed a petition for judicial review ("the Petition") under Cause Number 66D01-2009-PL-10 ("Cause Number 10"). The Petitioners claimed that the Application had not included all of the information required by the UDO and, therefore, should not have been

processed. Specifically, the Petitioners argued that the submitted "Application [had not included], 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 communication study." (Appellant's App. Vol. 2 at 52). According to the Petitioners, the Application had "failed to satisfy the requirements for approval of a special exception." (Appellant's App. Vol. 2 at 55).

[24] The Petitioners further alleged that they had standing to obtain judicial review because they had appeared at the public hearings in person and/or by counsel, had presented relevant evidence, and had been aggrieved by the BZA's decision. In support of their allegation that they had been aggrieved, the Petitioners further alleged that they either owned real property within 660 feet of the proposed CSES, resided within one mile of the proposed CSES, or owned homes that would be bordered by the CSES's panels. Therefore, according to the Petitioners, their property values and quality of life would suffer if Mammoth Solar were permitted to proceed with the CSES. Also in the Petition, the Petitioners requested that the BZA prepare its record ("the BZA Record") for judicial review and deliver it to the Petitioners' counsel so that the Petitioners could transmit it to the trial court within thirty days of the filing of the Petition as required by statute.

[25] In October 2020, the Petitioners and the BZA agreed to an extension of time up to and including December 1, 2020, to transmit the BZA Record to the trial court. The trial court entered an order approving the stipulated extension of

time. As the December 1 deadline approached, the Petitioners and the BZA realized that the BZA Record could not be completed by the deadline. The Petitioners and the BZA therefore agreed, during an email exchange, to an additional extension of time, up to and including December 15, 2020, to transmit the BZA Record to the trial court. Mammoth Solar was copied on the emails and did not object to the second extension of time. The Petitioners e-filed the second stipulated motion for an extension of time in the Pulaski Superior Court on November 24, 2020, at 3:32 p.m. The second stipulated motion for an extension of time identified the proper court, and the caption listed all of the parties to the judicial review proceeding. The motion further referenced the filing of the petition for judicial review and the filing of the record. However, the Petitioners mistakenly filed the second stipulated motion for extension of time in Cause Number 66D01-2009-PL-9 ("Cause Number 9"), which was a related action that the Petitioners had filed against the Commissioners. The trial court issued an order approving the stipulated extension of time. However, this order was issued in Cause Number 9.

[26] On December 10, 2020, Mammoth Solar filed a motion to dismiss the Petition based upon the Petitioners' failure to timely transmit the BZA Record to the trial court. Mammoth Solar specifically argued that the Petitioners had failed to file the BZA Record by the original stipulated extension date of December 1, 2020. In support of its motion, Mammoth Solar cited INDIANA CODE § 36-7-4-1613, which requires the Petitioner to transmit the BZA Record to the trial court within thirty days of the filing of the petition or within further time as

allowed by the trial court. Mammoth Solar also cited *Carmel Board of Zoning Appeals v. Bidgood*, 120 N.E.3d 1045, 150 (Ind. Ct. App. 2019) in support of its argument that the timeliness requirements set forth in the statute are strictly construed and that the record or an extension of time to transmit the record must be filed within thirty days of the petition. According to Mammoth Solar, pursuant to *Bidgood*, the trial court may not otherwise alter the timeline or retroactively grant an extension. *See id*. Petitioners transmitted the BZA Record on December 15, 2020.

[27] In February 2021, the Petitioners filed a memorandum in opposition to Mammoth Solar's motion to dismiss and a motion for corrective action and/or nunc pro tunc entry. In their memorandum, the Petitioners explained that they had initially been confused by Mammoth Solar's argument because the trial court had granted their second stipulated motion for extension of time and, pursuant to the trial court's order, the BZA Record had not been due until December 15, 2020. However, the Petitioners further explained that they had subsequently realized that the second stipulated motion and the trial court's order granting that motion had been "filed with an erroneous cause number." (Appellees' App. Vol 2 at 24). Specifically, the motion and order bore Cause Number 9 instead of Cause Number 10. According to the Petitioners, this mistake was simply a "clerical error[,]" and it would be appropriate for the trial court "to enter a corrective entry and/or *nunc pro tunc* entry reflecting the timely filing and granting of the Stipulated Motion in the [Cause] 10 Judicial Review Action." (Appellees' App. Vol. 2 at 24, 31). Following a hearing, the trial

court denied Mammoth Solar's motion to dismiss and granted the Petitioners' motion for a corrective entry.[4]

[28] In March 2021, Mammoth Solar filed a motion for summary judgment on the issue of the Petitioners' standing. Specifically, Mammoth Solar argued that the Petitioners did not have standing to challenge the BZA's approval of the Application because the Petitioners had not shown that they were aggrieved by the BZA's decision. In support of its motion, Mammoth Solar directed the trial court to the BZA's order, which had found that the proposed special exception would have a positive impact on property values throughout the county and had implemented several specific conditions to mitigate any potential quality of life impacts. The Petitioners responded that they had standing because they were aggrieved by the BZA's decision. In support of their response, the Petitioners directed the trial court to the evidence they had submitted at the public hearings regarding the adverse effect of the CSES on their property values and quality of life. Following a hearing, the trial court denied Mammoth Solar's summary judgment motion.

[29] In June 2021, the trial court held a hearing on the Petition. At the hearing, the Petitioners argued that Mammoth Solar had not had the authority to file the

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[4] Neither the parties' appellate briefs nor the trial court's Chronological Case Summary ("the CCS") includes the trial court's order granting the Petitioners' motion for corrective action. The CCS specifically provides: "Administrative Event . . . Court denies Motion to Dismiss [and] allows filings by Petitioner[s]." February 22, 2021, CCS Entry. Therefore, the specific corrective action that the trial court granted, whether a *nunc pro tunc* entry or other action, is unknown.

Application, the Administrator had not had the authority to certify the Application, and the Application should not have been the subject of a public hearing because the Application was not complete. Specifically, the Petitioners pointed out that the Application had failed to include information required by the UDO, including a fire safety plan, a plan for a configuration of the panels, and information about the origin of the panels. The gravamen of Mammoth Solar's response to the Petitioners' arguments was that it was within the purview of the BZA to determine whether the Application was complete.

[30] In August 2021, the trial court issued a twenty-eight-page order reversing the BZA's approval of the Application and remanding the case to the BZA for further proceedings. In the first six pages of its order, the trial court summarized the case and concluded, in relevant part, as follows:

> Mammoth Solar seeks to build and operate one of the largest commercial solar plants in the United States, and one of the largest in the world[.] Mammoth Solar has selected Indiana for this industrial plant, specifically, farmland in Pulaski and Starke Counties, located in the northern part of the state. The overall project has been divided into three (3) phases. The case at hand involves phase 1, and 4,500+ acres located in Pulaski County. Use of this land in Pulaski County for a commercial solar plant is not legally permitted without first obtaining a zoning exception. Therefore, Mammoth Solar needed to obtain a Special Exception from the Pulaski County Board of Zoning Appeals, (BZA).
>
> To get a Special Exception in Pulaski County, all Commercial Solar Energy Systems (CSES), have to submit an application to the BZA, complying with all of the legal requirements for such applications. Those requirements and the legal procedures to be followed are set out in a law that was adopted by the Pulaski

County Board of Commissioners on December 19, 2019, called the Unified Development Ordinance (UDO)[.]

Mammoth's application, like all applications for a Special Exception to develop a CSES, must comply with the minimum requirements of the UDO before the application is deemed to be "complete." A completed application is a **prerequisite** to the BZA taking any action on the application, such as holding public meetings, receiving evidence, determining facts, voting, etc. Obviously, everyone would want full disclosure of all of the solar project details required by the UDO to promote an open and informed debate as to the impact of a solar project over 4,511 acres and whether the project would be safe for the community.

The application filed by Mammoth Solar on June 24, 2020, failed to comply with the minimum legal requirements of the UDO. This fact is undisputed. Mammoth Solar has admitted that the application fails to satisfy the legal requirements of the law developed by the Pulaski County Commissioners. Mammoth explained that they will employ a different procedure than the UDO requires, and it will be on their timetable, perhaps during the "design phase." Mammoth will determine when the additional information will be provided to the people of Pulaski County, and only then **after the application is approved**.

Mammoth's explanation regarding the manner in which they will proceed, and their failure to comply with the clear and unambiguous requirements of the UDO, was nevertheless, apparently sufficient for the BZA, which proceeded to hold two public hearings and then unanimously approved the legally deficient application. Indiana law prohibits such action by a government agency. The BZA was required to act in accordance with law and was not at liberty to ignore clearly defined legal procedures[.]

Everyone seemed to agree that the law (UDO) was not followed. However, while some property owners object, others say never mind let us get on with it. Moreover, while the BZA was willing

to overlook the legal errors, hold public hearings and approve an incomplete application, now we find the entire matter being reviewed by the judicial branch in Indiana.

Clearly, when a government agency decision is being reviewed by the judiciary, great deference is granted to that agency's weighing of evidence, findings of fact, and exercising discretion. However, the same degree of deference is not granted to an agency's legal conclusions. Law is the province of the judiciary. Indiana has long recognized that the reviewing court may set aside agency action not in accordance with law[.]

Here, the Pulaski County Commissioners created a law (UDO) which set the minimum requirements needed for a Special Exception to develop a Commercial Solar Energy System. The Pulaski County Board of Zoning Appeals ignored the legal requirements of that law and unanimously approved the application, thereby permitting Mammoth Solar to develop a massive solar farm over 4,500+ acres, without even satisfying a simple requirement such as including a fire protection plan for the safety of the people of Pulaski County.

If the elected officials don't like the law they passed, then they can change it. But they cannot pass a law and ignore it, and subsequently expect an Indiana Judge exercising judicial review to look the other way. This I will not do.

Therefore, by law, this Court is required to reverse the action of the Pulaski County BZA. But, there is a simple remedy. Require Mammoth to provide a completed application as required by the Pulaski County UDO. After Mammoth Solar has presented a "completed" application, then review the detailed information provided, allow the public to be heard on the completed application, and make an informed decision that is in the best interests of the people of Pulaski County.

A trial court has the authority to remand the case for further agency proceedings. Therefore, upon the statutory authority of

> IC 36-7-4-1615 . . ., this court now remands this case to the Pulaski County Board of Zoning Appeals for further proceedings.

(Appellant's App. Vol. 2 at 22-27) (Emphases in the original).

[31] The remaining twenty-two pages of the trial court's order include detailed findings of fact and conclusions thereon. Specifically, the trial court found that, although required by the UDO, Mammoth Solar's application failed to include a site layout plan, a topographic map, a communications study, a utility certification, and evidence of compliance with storm drainage, erosion, and sediment control regulations. The trial court noted that Mammoth Solar admitted to several of the omissions during the public hearing and explained that it would provide those items in the design phase. However, the trial court further noted, that those items are required as part of an application and that the UDO does not allow those items to be provided later.

[32] In addition, the trial court concluded that the Petitioners had standing to challenge the BZA's approval of the Application. Specifically, the trial court concluded that one or more of the Petitioners met the statutory requirements to establish standing by "participating in the board hearing through various means and being aggrieved, as evidenced by the showing of the negative impacts on the Petitioners' property values and quality of life." (Appellant's App. Vol. 2 at 38).

[33] The trial court further concluded, in relevant part, as follows:

> 1. The individuals seeking judicial relief have been prejudiced by the [BZA's] action to disregard the clear and

unambiguous language of the [UDO] regarding the minimum requirements for all applications for Special Exceptions submitted by [CSES] prior to determining Mammoth Solar's application to be complete, acting upon it, and approving it.[5] The BZA was not at liberty to disregard the law.

2. By disregarding the legal requirements of the UDO, the actions of the BZA were arbitrary and capricious, not in accordance with the law, and without observance of procedure required by law.

3. Finding that the [A]pplication was incomplete, should not have been acted upon by the BZA until it was in compliance with the UDO, and in utilizing the remedy provided in IC 36-7-4-1615, this Court now sets aside the BZA actions and remands this case to the BZA for further proceedings.

4. Inasmuch as this Court finds that the [A]pplication was not complete and should not have been acted upon, there is no need for the Court to review the merits of the [A]pplication or the BZA findings of fact. Accordingly, this ruling is limited to the finding that the [A]pplication was legally deficient and was not properly before the BZA to hold public hearings, listen to evidence, find facts, and vote. Consequently, this Court declines to exercise judicial review of any BZA actions taken on the incomplete application, finding simply that all actions taken on the incomplete application are vacated, and the matter is remanded to the [BZA] for further proceedings.

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[5] The trial court specifically concluded that the Petitioners had been prejudiced by: (1) the proximity of their residences to the proposed CSES; (2) evidence that their property values would be diminished; and (3) the BZA's failure to require the Application to comply with the UDO, which prevented the Petitioners from accessing the information that was required for them to meaningfully participate in the public hearings.

(Appellant's App. Vol 2 at 48-49) (footnote added).

[34] Mammoth Solar now appeals.

Decision

[35] Mammoth Solar argues that: (1) the Petitioners lack standing to challenge the BZA's approval of the Application; (2) the Petitioners did not timely file the BZA's record; (3) the Petitioners failed to demonstrate that they had been prejudiced by the BZA's approval of the Application; and (4) the BZA's approval of the Application was not arbitrary and capricious. We address each of Mammoth Solar's arguments in turn.

[36] At the outset, we note that Mammoth Solar appeals following the trial court's reversal of the BZA's decision. When reviewing a BZA's decision, we are bound by the same standard of review as the trial court. *Essroc Cement Corporation v. Clark County Board of Zoning Appeals*, 122 N.E.3d 881, 890 (Ind. Ct. App. 2019), *trans. denied*. We may not reverse a BZA decision "unless an error of law is demonstrated." *Burcham v. Metropolitan Board of Zoning Appeals Division I of Marion County*, 883 N.E.2d 204, 213 (Ind. Ct. App. 2008) (internal citation and quotation marks omitted). "Neither may we substitute our judgment for that of the BZA unless the appellant demonstrates illegality in the BZA's action." *Id*.

[37] We may not try the facts de novo or substitute our judgment for that of the BZA. *Id*. "Neither may we reweigh the evidence or reassess the credibility of the witnesses." *Id*. (internal citation and quotation marks omitted). Rather, we

must accept the facts as found by the BZA. *Id*. However, we review de novo any questions of law decided by the BZA. *Id*. "The burden of demonstrating the invalidity of a zoning decision is on the party to the judicial review proceeding asserting invalidity." *Essroc*, 122 N.E.3d at 891 (citing INDIANA CODE § 36-7-4-1614(a)).

1. Standing

[38] Mammoth Solar first argues that the Petitioners lack standing to challenge the BZA's approval of the Application. Mammoth Solar specifically contends that the Petitioners have not shown that they were aggrieved by the BZA's decision.

[39] Standing is a judicial doctrine that focuses on whether the complaining party is the proper party to invoke the trial court's jurisdiction. *Pflugh v Indianapolis Historic Preservation Commission*, 108 N.E.3d 904, 908 (Ind. Ct. App. 2018), *trans. denied*. "Standing must thus be analyzed before the merits of the case because if a p[arty] has no standing, then the Court has no jurisdiction to determine the merits." *Id*. We review de novo a trial court's determination regarding a party's standing. *Id*.

[40] INDIANA CODE § 36-7-4-1603 provides, in relevant part, as follows:

> (a) The following have standing to obtain judicial review of a zoning decision:
>
> * * * * *

> (2) A person aggrieved by the zoning decision who participated in the board hearing that led to the decision . . .
>
> (A) by appearing at the hearing in person, by agent, or by attorney and presenting relevant evidence[.]

I.C. § 36-7-4-1603(a)(2)(A). The Indiana Supreme Court has explained that:

> [t]o be aggrieved, the petitioner must experience a substantial grievance, a denial of some personal or property right or the imposition . . . of a burden or obligation. The board of zoning appeals's decision must infringe upon a legal right of the petitioner that will be enlarged or diminished by the result of the appeal and the petitioner's resulting injury must be pecuniary in nature. A [petitioner] must show some special injury other than that sustained by the community as a whole.

Bagnall v. Town of Beverly Shores, 726 N.E.2d 782, 786 (Ind. 2000) (internal citation and quotation marks omitted).

[41] In *Sexton v. Jackson County Board of Zoning Appeals*, 884 N.E.2d 889 (Ind. Ct. App. 2008), this Court considered whether the petitioners had been aggrieved and, therefore, had standing to challenge the BZA's approval of an application. Specifically, in the *Sexton* case, the BZA approved Lykins' application for a concentrated animal feeding operation ("CAFO"). When the petitioners appealed to the trial court, Lykins argued that the petitioners lacked standing to challenge the BZA's approval of her application because the petitioners, who lived between 1,200 feet and one-half mile from the proposed CAFO, had not been aggrieved. The trial court agreed with Lykins and concluded that the

petitioners lacked standing to challenge the BZA's approval of Lykins' application. However, on appeal, this Court determined that because the petitioners had presented evidence that the value of their properties would decrease if the CAFO were to be constructed, the petitioners had shown that they would suffer a pecuniary loss by the granting of Lykins' application. *Id*. at 894. Specifically, the petitioners had presented the township assessor's testimony that the petitioners' property values would decrease if the CAFO were to be constructed. According to the assessor, he would not be surprised to see the petitioners' property values drop thirty percent. We concluded that the petitioners' evidence that they would suffer a pecuniary loss was sufficient to show that they were aggrieved. *Id*. We, therefore, concluded the petitioners had standing to challenge the BZA's approval of Lykins' application. *Id*.

[42] Here, as in *Sexton*, because the Petitioners have presented evidence that their property values will decrease if Mammoth Solar's CSES were to be constructed, the Petitioners have shown that they would suffer a pecuniary loss by the granting of Mammoth Solar's application. Specifically, Pulaski County real estate agent Stevenson submitted to the BZA a written report, wherein Stevenson concluded that the property values of rural homes, recreational land, and farmland would all decrease if the CSES were to be constructed. In addition, real estate broker Spooner, who conducted six months of research on the impact of a proposed solar farm in Madison County, submitted a report wherein she concluded that houses surrounded by a solar farm on three or four sides would be worthless, houses affected on two sides would suffer a 40%

decrease in value, houses within one mile of a solar farm would suffer a 10% to 40% decrease in value, and houses within three miles of a solar farm would suffer a 10% to 20% loss. Indeed, even the BZA's decision specifically concluded that it was "undeniable and unavoidable" that a significant number of the 220 homes within one mile of the proposed site would see a decrease in property values. (Appellant's App. Vol. 5 at 180). Here, as in *Sexton*, the Petitioners' evidence that they would suffer a pecuniary loss was sufficient to show that they were aggrieved. We, therefore, conclude that the Petitioners have standing to challenge the BZA's approval of the Application and affirm the trial court's judgment on this issue.[6]

2. Transmitting the BZA Record

[43] Mammoth Solar next argues that the Petitioners did not timely transmit the BZA Record to the trial court. Mammoth Solar specifically contends that pursuant to the trial court's initial order approving the stipulated extension of time, the BZA Record was due on December 1, 2020. Further, according to Mammoth Solar, the Petitioners failed to properly request an additional

[6] In addition, we agree with the Petitioners that the BZA-proposed PVG both supports their argument that their property values will decrease and is "an illusory guarantee with no long-term protection" that applies only to buildings. (Petitioners' Br. 18). Thus, recreational land and farmland receive no price value guarantee and suffer the acknowledged decrease in value. In addition, the PVG is only triggered by the sale of an existing structure and provides no protection for property owners who remain on their property and, for example, attempt to refinance it.

extension of time and did not transmit the BZA Record until December 15, 2020.

[44] INDIANA CODE § 36-7-4-1613 provides as follows:

> (a) Within thirty (30) days after the filing of the petition, or within further time allowed by the court, the petitioner shall transmit to the court the original or a certified copy of the board record for judicial review of the zoning decision[.]
>
> * * * * *
>
> (b) An extension of time in which to file the record shall be granted by the court for good cause shown. Inability to obtain the record from the responsible board within the time permitted by this section is good cause. Failure to file the record within the time permitted by this subsection, including any extension period ordered by the court, is cause for dismissal of the petition for review by the court, on its own motion, or on petition of any party of record to the proceeding.

IND. CODE § 36-7-4-1613(a) and (b). In *Howard v. Allen County Board of Zoning Appeals*, 991 N.E.2d 128, 129 (Ind. Ct. App. 2013), this Court interpreted INDIANA CODE § 36-7-4-1613 "to require dismissal where no materials supporting judicial review of the petitioner's claim are timely filed and an extension of the filing deadline is not timely requested[.]" Further, "[t]he statute places on the petitioner the responsibility to file the agency record timely." *Indiana Family and Social Services Administration v. Meyer*, 927 N.E.2d 367, 370 (Ind. 2010) (interpreting the AOPA requirement of filing the agency record). Moreover, the trial court may grant a request for an extension of time

under this statute "only if the request is made during the initial thirty days following the filing of the petition for review or within any previously granted extension." *Id*. at 370-71 (citations and quotation marks omitted). "In short, the statute acknowledges possible difficulties in preparing and submitting the agency record, but places the burden on the petitioner to file or seek an extension within the statutory period or any extension." *Id*. at 371.

[45] We further note that the purpose of this statute "is to ensure that the review of agency action proceeds in an efficient and speedy manner, and that the reviewing trial court has access to the record before rendering its decision." *Id*. at 370. "The filing requirement also ensures that no relevant evidence or materials are hidden, and no 'new' or 'secret' evidence is introduced to either contradict or support an agency decision." *Id*. (citation and quotation marks omitted).

[46] As a brief review of the facts relevant to this issue, we note that in October 2020, the Petitioners and the BZA agreed to an extension of time up to and including December 1, 2020, to transmit the BZA Record. The trial court entered an order approving the stipulated extension of time. As the December 1 deadline approached, the Petitioners and the BZA realized that the BZA Record could not be completed by the deadline. The Petitioners and the BZA therefore agreed, during an email exchange, to an additional extension of time, up to and including December 15, 2020, to transmit the BZA Record to the trial court. Mammoth Solar was copied on the emails and did not object to the second extension of time. The Petitioners e-filed the second stipulated motion

for an extension of time with the Pulaski Superior Court on November 24, 2020, at 3:32 p.m. However, the Petitioners filed this motion in Cause 9 rather than Cause 10. The trial court granted the Petitioners' motion; however, the trial court's order was also filed in Cause 9. On December 10, Mammoth Solar filed a motion to dismiss the petition for judicial review based upon the Petitioners' failure to timely transmit the BZA Record to the trial court. In response, the Petitioners filed a motion for corrective action asking the trial court to enter a corrective entry reflecting the timely filing of the BZA Record and granting the stipulated motion for extension of time in the Cause 10 judicial review action.

[47] In resolving this issue, we must first determine whether the Petitioners' second motion for extension of time was timely filed. Our analysis begins with the term "filing with the court" as set forth in the Indiana Trial Rules. Trial Rule 5(F) provides that filing with the court shall be made, among other ways, by "[e]lectronic filing[.]" T.R. 5(F)(6). A document is considered filed when it is delivered to the proper officer and received by the officer for the purpose of filing. *Kaster v. Heinrich*, 489 N.E.2d 152, 155 (Ind. Ct. App. 1986). The file stamp endorsed on the document is merely evidence of filing. *Id*.

[48] Here, there is no dispute that the Petitioners' second motion for extension of time was delivered to and received by the proper officer, the Pulaski Superior Court. Because the Pulaski Superior Court was the proper officer to receive the motion, the motion was filed when it was presented to that court on November 24, 2020, at 3:32 p.m., as evidenced by the file stamp bearing that date and

time. *See id*. In addition, the motion was filed within the trial court's previously granted extension, which was up to and including December 1, 2020. The Petitioners' second motion for extension of time was, therefore, timely filed.

[49] Although the motion was timely filed, the Petitioners acknowledge that they initially filed the motion in Cause 9 rather than in Cause 10. The Petitioners further acknowledge that the trial court's order granting their motion was also filed in Cause 9. However, the Petitioners contend that filing the motion in the incorrect cause number was a clerical error,[7] which does not warrant dismissal. We agree.

[50] We addressed a similar issue in *Kaster*, 489 N.E.2d at 152. In the *Kaster* case, a physician filed his motion for extension of time on December 29, 1983, as evidenced by the file stamp bearing that date and the clerk's signature. However, the motion incorrectly identified the court and the cause number of the case. The physician filed the motion again on January 13, 1984. This time the motion bore the correct court and cause number. The trial court granted the physician's motion. On appeal, Kaster argued that the trial court should not have granted the motion because it had been untimely filed on January 13,

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[7] "We have explained that, in the context of Trial Rule 60(A), a 'clerical error' is defined as a mistake by a clerk, counsel, judge, or printer that is not a result of judicial function and cannot reasonably be attributed to the exercise of judicial consideration or discretion." *Elliott v Dyck O'Neal, Inc.*, 46 N.E.3d 448, 456 (Ind. Ct. App. 2015) (citations and quotation marks omitted), *trans. denied*. "The purpose of T.R. 60(A) is to recognize that, in the case of clearly demonstrable mechanical error, the interests of fairness outweigh the interests of finality which attend the prior adjudication." *Id.*

1984. The physician, on the other hand, argued that the trial court had properly granted the motion because excusable neglect, such as a clerical error, should not deny a party a fair trial.

[51] On appeal, we first noted that the motion had been considered filed when it had been presented to the clerk of the court on December 29, 1983, as evidenced by the file stamp. *Id*. at 155. The issue next became whether the motion, which included an incorrect cause number, sufficiently related to or could be identified with the case that been instituted. *Id*. We noted that technical exactness required in pleadings is not similarly demanded in motions and that a motion must simply "bear some identification to a pending case." *Id*. We determined that although the motion in the case had included an erroneous cause number, the motion had stated the correct case name. *Id*. Therefore, a means had existed to identify the motion with the pending case, and it was within the trial court's discretion to consider the motion filed on December 29, 1983. *Id*. Accordingly, we affirmed the trial court's grant of the physicians' motion for enlargement of time. *Id*.

[52] Here, the Petitioners' second motion for extension of time stated the correct case name and court. The motion's caption also properly identified all parties to the judicial review proceeding. Further, the motion referenced the filing of the petition for judicial review as well as the BZA Record, both of which related to Cause 10's judicial review action. In addition, the motion was signed by two of the BZA's attorneys, and the BZA is not a party in Cause 9. We further note that Mammoth Solar was included on emails regarding the necessity of a

second extension of time to transmit the BZA record. Because a means existed to identify the motion with the pending judicial review case and because Mammoth Solar was aware of the second motion for extension of time, it was within the trial court's discretion to consider the second motion for extension of time filed on November 24. As a result, the BZA record was due on December 15, which is the day that the Petitioners transmitted the BZA Record to the trial court. We, therefore, conclude that the Petitioners timely transmitted the BZA Record to the trial court. We note that our conclusion is consistent with the statute's purpose to ensure that the trial court's review of agency action proceeds in an efficient and speedy manner, and the trial court has access to the BZA Record before rendering its decision.[8]

3. Arbitrary and Capricious

[53] Mammoth Solar next argues that the BZA's approval of the Application was not arbitrary and capricious. The gravamen of Mammoth Solar's argument is that the BZA's approval of the Application was not arbitrary and capricious because the BZA properly interpreted the UDO.

[54] INDIANA CODE § 36-7-4-1614 provides, in relevant part, as follows:

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[8] Regarding Mammoth Solar's argument that the trial court did not have the authority to retroactively grant an extension after the time for an extension expired[,]" we note that because the Petitioners' second motion for an extension of time was timely filed, the trial court did not grant an extension after the time for an extension had expired. (Mammoth Solar's Br. 23). Rather, the trial court simply corrected a clerical error.

> (d) The court shall grant relief under section 1615 of this chapter[9] only if the court determines that a person seeking judicial relief has been prejudiced by a zoning decision that is:
>
> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
>
> (2) contrary to constitutional right, power, privilege, or immunity;
>
> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (4) without observance of procedure required by law; or
>
> (5) unsupported by substantial evidence.

IND. CODE § 36-7-4-1614(d) (footnote added). A decision is arbitrary and capricious if it is "patently unreasonable[;] made without consideration of the facts and in total disregard of the circumstances and lacks any basis which might lead a reasonable person to the same conclusion." *Lockerbie Glove Factory*

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[9] INDIANA CODE § 36-7-4-1615 provides as follows:

> If the court finds that a person has been prejudiced under section 1614 of this chapter, the court may set aside a zoning decision and:
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> (1) remand the case to the board for further proceedings; or
> (2) compel a decision that has been unreasonably delayed or unlawfully withheld.

Town Home Owners Association, Inc. v. Indianapolis Historic Preservation Commission, 106 N.E.3d 482, 487 (Ind. Ct. App. 2018), *trans. denied*.

[55] The parties agree that this issue turns on the interpretation of certain provisions of the UDO and its application to the requirements for a CSES. Construction of a zoning ordinance is a question of law. *Chambers v. Delaware-Muncie Metropolitan Board of Zoning*, 150 N.E.3d 603, 608 (Ind. Ct. App. 2020). When we construe a zoning ordinance, we apply the same rules of construction that we use on statutes. *Id*. "The express language of the ordinance controls our interpretation and our goal is to determine, give effect to, and implement the intent of the enacting body." *Id*. (citation and internal quotation marks omitted). The plain language of the ordinance is the best evidence of the drafters' intent. *Id*. An agency's incorrect interpretation of an ordinance is entitled to no weight. *Id*. If an agency misconstrues an ordinance, there is no reasonable basis for the agency's ultimate action, and the reviewing court is required to reverse the agency's action as being arbitrary and capricious. *Id*.

[56] Here, the UDO's drafters clearly stated the intent of the UDO in section 7, which concerns solar energy systems ("SES") and provides that "[t]he purpose of this section is to . . . [a]ssure that any development of and production of . . . solar-generated electricity in Pulaski County is safe and effective[.]" (Appellant's App. Vol 4. at 162). In addition, Section 7.5(A) provides that "permits and variances shall be applied for and reviewed under the procedures established by this UDO and the application procedures . . . for a[n] . . . SES Improvement Location Permit." (Appellant's App. Vol. 4 at 165). Section

7.5(A)(2) further directs the applicant to section 2.3(R) for the specific application procedures.

[57] Section 2.3(R)(1) sets forth the specific information that an application for any SES "shall include[.]" (Appellees' App. Vol. 3 at 5). This specific information includes a detailed project description and an engineering certification. In addition, section 2.3(R)(3) sets forth the specific information that an application for any CSES, such as that submitted by Mammoth Solar, "shall include[.]" (Appellees' App. Vol. 3 at 7). This specific information includes a detailed site layout plan, including a fire protection plan for the construction and operation of the facility, a topographic map, a communications study, certification of compliance with utility notification requirements, and evidence of compliance with storm drainage, erosion, and sediment control regulations.

[58] We note that the UDO clearly states that an application for a CSES *shall* include the specific information set forth in sections 2.3(R)(1) and (3). "When the word shall appears in a statute, it is construed as mandatory rather than directory unless it appears clear from the context or the purpose of the statute that the legislature intended a different meaning." *Shepherd v. Carlin*, 813 N.E.2d 1200, 1203 (Ind. Ct. App. 2004). Here, Mammoth Solar does not argue that the UDO's drafters intended for shall to have a different meaning, and our review of the context and purpose of the UDO reveals no such intent. *See also Taylor v. State*, 7 N.E.3d 362, 365 (Ind. Ct. App. 2014) (explaining that "[i]t is well[-]settled that the use of the word 'shall' is construed as mandatory language.") (citation and quotation marks omitted).

[59] In light of both the UDO's stated purpose to ensure the safe and effective development and production of solar-generated electricity in Pulaski County and the drafters' use of plain and unambiguous mandatory language in the section of the UDO concerning the information to be included in an application, the drafters clearly intended the information set forth in sections 2.3(R)(1) and (3) to be required in all CSES applications. Stated differently, these two sections accord no room to discretion. Rather, the clear import of sections 2.3(R)(1) and (3) is that the specific information set forth in these sections is required to be in a CSES application. Because Mammoth Solar's application did not include the required information, the BZA should not have approved the Application. Specifically, the BZA's incorrect interpretation of the UDO is entitled to no weight, and we are required to reverse the BZA's approval of the Application as being arbitrary and capricious. *See Chambers*, 150 N.E.3d at 608.[10]

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[10] The BZA nevertheless argues that the UDO "provides for an Administrator to have review authority and additional powers and responsibilities in administering and reviewing development applications. *See* UDO § 2.2(A)(1)(d); *see also* UDO § 2.2(E)." (Mammoth Solar's Br. 30). According to Mammoth Solar, "[t]he Administrator is also authorized to establish requirements for the content and form for each type of specific development application reviewed under the UDO. *See* UDO § 2.2(E)(2)(d)(1)." (Mammoth Solar's Br. 30). Mammoth Solar further argues that "the Administrator may amend and update application requirement provisions as necessary to ensure effective and efficient review. *See* UDO § 2.3(B)(2)." (Mammoth Solar's Br. 30). However, our review of the UDO provisions concerning the Administrator reveals no authority for an Administrator to amend and update application requirements *after* an application has been submitted and to apply those new requirements to approve that application. Indeed, such an interpretation of the UDO would render section 2.3 and its application requirements meaningless. *See Burton v. Board of Zoning Appeals of Madison County*, 174 N.E.3d 202, 212-13 (Ind. Ct. App. 2021) (explaining that we will examine the ordinance as a whole and read its sections together so that no part is rendered meaningless), *trans. denied*.

Mammoth Solar also directs us to UDO section 2.3(R)(1)(f), a subsection of the special exception application requirements for an SES, which provides that "[f]or all SES, the manufacturer's engineer or another qualified registered profession[al] shall certify, *as part of the building permit application*, that all equipment is within accepted professional standards[.]" (Mammoth Solar's Br. 33) (emphasis in Mammoth Solar's Brief). According to Mammoth Solar, "[u]nder its broad grant of authority, the BZA recognized the ambiguity in this provision and

4. Prejudice

[60] Mammoth Solar further argues that the Petitioners were not prejudiced by the BZA's approval of the Application. Specifically, in a brief conclusory argument, Mammoth Solar opines that the Petitioners' "disagreement with the Solar Farm does not automatically 'prejudice' them." (Mammoth Solar's Br. 25). According to Mammoth Solar, "the BZA heard and considered [the Petitioners]'s grievances but ultimately concluded the Project satisfied the requirements set forth in the UDO." (Mammoth Solar's Br. 25).

[61] INDIANA CODE § 36-7-4-1614 provides that "[t]he court shall grant relief under section 1615 of this chapter only if the court determines that a person seeking judicial relief has been prejudiced by a zoning decision . . . that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." IND. CODE § 36-7-4-1614(d). *See also Dunmoyer v. Wells County, Indiana Area Plan Commission*, 32 N.E.3d 785, 795 (Ind. Ct. App. 2015) (explaining that "[r]elief is available to [Petitioners] only if they can prove that they were prejudiced by the Plan Commission's approval of the Zoning Decision.").

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deemed Mammoth's Application complete without the inclusion of some enumerated items set forth in UDO §2.3(R), including the engineering certificate, and determined that the information was not required until the building permit application process." (Mammoth Solar's Br. 33). However, the BZA's order contained no such conclusion. Further, even if the engineering certificate is a required part of the building permit application process, none of the other items set forth in section 2.3(R)(1) and (3) mention the building permit application process. Rather, all other items are required to be set forth in the application, and Mammoth Solar failed to include them in its application.

[62] In the *Dunmoyer* case, adjacent landowners argued that they had been prejudiced by the Area Plan Commission's approval of a wind energy conversion system (WECS) project. Specifically, the landowners argued that they had been prejudiced by their proximity to the wind turbines, a decrease in the value of their land, and the turbines' noise and shadow flicker. This Court concluded that the landowners' examples of prejudice had not been created by the Commission's approval of the WECS project. *Id*. at 796-97. Rather, we determined that those circumstances had been created by the county legislative body, which had consciously elected to allow WECS projects so long as they complied with specific requirements set forth in the Zoning Ordinance. *Id*. at 797. We, therefore, concluded that the landowners had not met their burden to prove that they had been prejudiced by the Area Plan Commission's approval of the WECS project. *Id*. We further noted that we were not diminishing the landowners' concerns regarding the placement of the wind turbines. *Id*. Instead, we were recognizing the power that our legislature had given to the county legislative body to determine the uses that would be permitted in various zones of the county. *Id*.

[63] Here, however, the Petitioners were directly prejudiced by the BZA's arbitrary and capricious approval of Mammoth Solar's application, which failed to comply with the UDO's application requirements. Specifically, the BZA's approval of an incomplete application denied the Petitioners access to information that would have allowed them to meaningfully participate in the public hearings. In addition, the Petitioners' prejudice resulting from their

proximity to the solar panels and the decrease in their property values was also caused by the BZA's approval of Mammoth Solar's incomplete application. The Petitioners have met their burden to prove that they were prejudiced by the BZA's decision as required by INDIANA CODE § 36-7-4-1614.[11]

[64] Affirmed.

May, J., and Brown, J., concur.

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[11] Mammoth Solar also argues that "[i]n the alternative, should the Court conclude the BZA erred when it deemed Mammoth[] [Solar's] Application complete, any such error was harmless." (Mammoth Solar's Br. 45). As the sole authority to support its argument, Mammoth Solar directs us to a footnote in *Town of Merrillville Board of Zoning Appeals v. Public Storage, Inc.*, 568 N.E.2d 1092 (Ind. Ct. App. 1991), *trans. denied*. In that footnote, this Court noted that the BZA had failed to enter its findings of fact on Public Storage's application for a special exception within five days as required by statute. Although the trial court had found this failure to be gross negligence on the part of the BZA, we agreed with the BZA that, without some prejudice to a party adversely affected by the late entry of findings of fact, the late entry was harmless error. *Town of Merrillville*, 568 N.E.2d at 1093 n.2. Mammoth Solar recognizes that the facts in *Town of Merrillville* are distinguishable from the facts at issue in this case but believes that any BZA error was harmless because "even if the BZA deemed Mammoth[] [Solar's] Application incomplete, Mammoth [Solar] would have supplemented its Application at the time requested by the BZA." (Mammoth Solar's Br. 45). First, Mammoth Solar is correct that the facts in *Town of Merrillville* are distinguishable from the facts in this case. Indeed, *Town of Merrillville* in no way supports a finding of harmless error in this case. Second, the BZA did not find the Application to be incomplete or request that Mammoth Solar supplement it. The BZA's error in approving the Application was not harmless.

We further note that in the Petitioners' petition for judicial review, the Petitioners challenged the qualifications of three BZA members. The Petitioners specifically argued that the members had a conflict of interest, were biased, or failed to meet the residency requirements to serve as a member. According to the Petitioners, "[t]he trial court held that [their] objections on these issues were waived and, if not waived, failed pursuant to the *de facto* officer doctrine." (Petitioners' Br. 36). Petitioners point out that "[e]ven though the trial court ruled against [them] on this issue, Mammoth [Solar] nonetheless argues the issue on appeal." (Petitioners' Br. 36). Petitioners further explain that they "are not challenging the trial court's decision on the member-qualification issues and, as such, no response is necessary on appeal. The trial court's decision stands[.]" (Petitioners' Br. 36). Accordingly, we need not address this issue.