IN THE SIXTH DISTRICT COURT OF APPEALS
STATE OF OHIO

STATE OF OHIO, ex rel. THE HARPER AND JANSTO FAMILY TRUST C/O LEATRA J HARPER AND STEVEN G JANSTO 729 Pine Valley Drive Bowling Green, Ohio 43402 Relator. vs. THE CITY OF BOWLING GREEN 305 North Main Street Bowling Green, Ohio 43402 Respondent.	)	CASE NO.: JUDGE: **VERIFIED COMPLAINT FOR A WRIT OF MANDAMUS**

Relator The Harper and Jansto Family Trust ("Relator"), through the undersigned counsel, submit to this Court the following Petition for a Writ of Mandamus to compel the City of Bowling Green ("BG") to institute eminent domain proceedings in the Wood County Probate Court under R.C. § 163.01 *et seq.* to compensate Relator for the uncompensated taking of its property.

PARTIES

1. Relator The Harper and Jansto Family Trust ("HJFT") owns real property located at 729 Pine Valley Drive, Bowling Green, Ohio 43402 (Parcel Nos. B08-510-260001119000 and B08-510-260001118001) ("Property").
2. Leatra J. Harper and Steven G. Jansto are trustees of the HJFT. They reside at the property.

3. Respondent City of Bowling Green ("City") is a municipal corporation possessing the power to appropriate land through eminent domain under R.C. § 163.01 *et seq.*

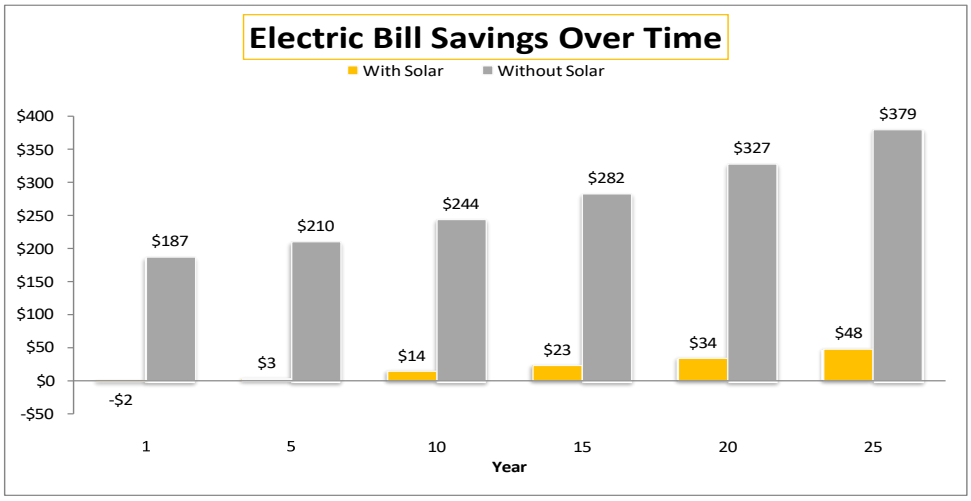
BACKGROUND

4. Relator re-alleges and incorporates by reference every material allegation in the previous paragraphs as if fully re-written herein.
5. Ms. Harper and Mr. Jansto are environmentally-minded individuals. They are deeply concerned about climate change and their carbon footprints.
6. Formerly living in Southeast Ohio, Ms. Harper and Mr. Jansto decided to sell their home after witnessing the harmful effects of hydraulic fracturing. They intended to purchase a new home that could support a green energy system.
7. Even after relocating to Grand Rapids, Ohio, and installing some green energy improvements, the couple was still dissatisfied with their home's carbon-dependent features.
8. To further reach their near net-zero carbon goals, and to be closer to family, Harper and Jansto decided to look for a new home in Bowling Green, Ohio — a city espousing green energy.
9. Bowling Green's website states that much of its energy usage is produced by renewable sources.[1] BG also partners with American Municipal Power (AMP), which offers the "Ecosmart Choice Program" that "enables Bowling Green energy customers to allocate up to 100% of their electricity usage to support renewable energy."[2]

[1] *See* https://www.bgohio.org/299/Renewable-Energy#:~:text=For%202021%2C%20over%2040%25%20of,by%20eligible%20renewable%20generation%20resources. For example, in 2021 over 40% of the total energy used by the City was produced by renewable resources.
[2] *See* https://ecosmartchoice.org/municipality/bowling-green-oh/.

10. Due to the City's philosophy, Ms. Harper and Mr. Jansto began looking for homes in Bowling Green.
11. Relator decided to purchase the Property in August 2018, noting that it had a south-facing roof space. Relator also received the necessary approvals from the HOA and County to install solar panels.
12. Relator quickly went to work making the necessary improvements for the panels' installation, including installing a new roof (that was not yet in need of replacement). Relator would also replace an existing gas-fired furnace still within its functional lifespan with a new geothermal heating unit for the purpose of using only electricity for heating and cooling.
13. Solar Panels and two Tesla batteries were mounted in March 2019. A third Tesla battery was added in April 2020. The total size of the renewable generation facility reached 13.95 kilowatts (kW).
14. Ms. Harper and Mr. Jansto also made additional investments to install new windows, replace a gas dryer with an electric dryer, install LED lights, and cap their gas fireplace, along with other improvements to make the home as energy-efficient as possible.
15. Relator was assured by projections from the solar panel and geothermal installers that their investment would pay for the upfront costs over the lifetime of the investment and add value to the home.[3]
16. The long-term electric savings are depicted in the graph below:

[3] *See also* solar/does-solar-increase-homevalue/#:~:text=According%20to%20the%20National% 20Renewable, higher%20than%20those%20without%20them.



17. Relator was also gratified to know the solar panels would provide clean energy to the municipal power system, especially during the warmer months when the grid strains to meet demand.

18. Ms. Harper and Mr. Jansto were very happy, as they finally owned what was supposed to be their suitable home for "aging in" and intended to make the house their "forever" home.

19. However, in December 2020, only a few months after completing most of their clean energy installations, Relator received notice in the mail of "Rider E."[4]

20. Rider E was contemplated by the Bowling Green Board of Public Utilities ("BPU") in October 2020[5] and again in December 2020.[6] It passed by unanimous vote despite public opposition.

21. Rider E is essentially a tax or penalty on those citizens who choose to install a solar energy system. It charges solar producers (i.e. homeowners) a fee for every kilowatt hour (kWh) produced "in order to recover the City's cost to provide electric service to

[4] Exhibit A (December 4, 2020 letter).
[5] Toledo Blade Article, March 3, 2021, at http://eblade.toledoblade.com//.pf/showstory/20210302122/1.
[6] Exhibit B (BGBPU October 2020 resolution).

customers with Interconnection Applications and to ensure that other electric customers are not subsidizing customers with renewable generation."[7] This accusation of costing other customers has yet to be substantiated.

22. Rider E obligates solar users "to pay a monthly Local Facilities Charge to recover **unavoidable costs** incurred by the Utility in providing service to Customers receiving distribution service" (emphasis added).[8] It prescribes an escalating fee scale starting at $1.00 per kWh in 2021 with an eventual increase to $4.00 per kWh in 2024.
23. The BPU fully implemented Rider E in July 2021. The new charges began showing up on solar customers' utility bills thereafter.
24. After receiving the notice, Ms. Harper contacted City Council representatives and repeatedly requested meetings with BG officials.[9] Relator simply sought an explanation as to fee calculations and what precisely constituted "unavoidable grid costs." Harper and Jansto never received such an explanation.
25. Upon submitting numerous public records requests, Ms. Harper received documents that show a substantial and costly effort to devise and implement Rider E without actual justification of grid costs caused by their solar installation. Relator's research instead shows that rooftop solar contributions to the grid are actually undervalued.[10] This information has been shared with BG Municipal Utilities, BG City Council, and others to no avail.

[7] Exhibit C (BGBPU December 2020 resolution).
[8] Exhibit D (Rider E). *See also* https://www.bgohio.org/DocumentCenter/View/672/Electric-Rate-Schedule-PDF, at 24-26.
[9] *See* https://bgindependentmedia.org/bg-utilities-and-residents-with-rooftop-solar-remain-at-odds-over-fee/.
[10] *See* https://doi.org/10.1016/j.rser.2020.110599.

26. To date, Relator has yet to receive an acceptable explanation for Rider E. Many experts believe these types of penalties are unlikely to have a complete mathematical justification behind their implementation.[11]

27. To Relator's knowledge, few Ohio municipalities have similar penalties or regulations.

28. Relator believes the Board's resolution is nothing more than an arbitrary penalty unsupported by facts or necessity. Relator further believes that the City's accusations of increased grid costs and unsubstantiated statements that less affluent non-solar neighbors subsidize solar customers are intended to promote negative public perception and pit residents against rooftop solar.

29. Once it became clear that BG would not justifiably rescind Rider E, Ms. Harper and Mr. Jansto decided to search, once again, for a new home in a city without a solar penalty. They listed their property for sale in early September 2021 amid a booming housing market.

30. Relator placed the Property on the market through a realtor for $630,000. This figure is what a real estate professional agreed to be fair market value after Harper and Jansto's many improvements.

31. The Property was on the market for five hundred and four (504) days. It was only shown eleven (11) times, and no offers were made. Relator even lowered the asking price to no avail.

32. In an effort to bring the lack of marketability and investment concerns to BG's attention, Harper and Jansto scheduled a Zoom call between Professor Gilbert Michaud of Loyola

[11] *See* http://dx.doi.org/10.1016/j.rser.2011.07.104 at page 1 ("Unfortunately, there is lack of clarity of reporting assumptions, justifications and degree of completeness in LCOE [levelized cost of electricity calculations], which produces widely varying and contradictory results.).

University, an expert in the solar field, City Council and BPU members. Only council member Nick Rubando attended. On the call, Relator conveyed its inability to sell their property, and Professor Michaud noted that the investment-back expectation on their improvement was now five to ten (5-10) years longer. The virtual meeting changed nothing, and Relator still does not have a justification for Rider E.

33. Relator is now trapped in a severely devalued home. The improvements to the Property have little to no attraction for prospective buyers. Moreover, Harper and Jansto are actually being penalized for their solar improvements while supplying electricity to BG residents.

UNDERSTANDING ROOFTOP SOLAR AND THE GRID

34. Relator re-alleges and incorporates by reference every material allegation in the previous paragraphs as if fully re-written herein.

35. Solar power is a renewable energy source touted for enabling individuals, businesses, electricity providers, and even militaries to generate some, if not all, energy needs without depending on fossil fuels. On top of fulfilling the user's energy demands, solar also can produce excess electricity, which can be fed into the electrical grid for other consumers' use.

36. As noted by the Department of Energy, "[p]ower providers (i.e., electric utilities) in most states allow net metering, an arrangement where the excess electricity generated by grid-connected renewable energy systems 'turns back' your electricity meter as it is fed back into the grid. If you use more electricity than your system feeds into the grid during a given

month, you pay your power provider only for the difference between what you used and what you produced."[12]

37. The federal government supports rooftop solar and incentivizes homeowners to install clean-energy systems as a way to place less strain on the grid and promote healthy communities.[13]

38. Solar homeowners receive a credit for the net amount of energy they contribute to the grid at the end of each month or pay for the net amount of energy used from the grid if they produce less power than they used. The rate at which solar homeowners are compensated for the energy they make for the grid is significant and should reflect the full value of solar — all that a rooftop solar array contributes to the grid.

39. However, Utility companies often seek to limit the electric bill credits solar homeowners receive for the energy they contribute to the grid. For example, energy produced by rooftop solar is compensated at a wholesale rate, while it is billed to ratepayers at a retail rate, profiting the utility.[14]

40. Distributed generation of solar with battery backup contributes to grid stability amidst extreme weather events and other threats. There are significant environmental and public health benefits to solar energy production. These tangible benefits should be included when determining the value of solar.

41. In this instance, Bowling Green claims that there are "unavoidable grid costs" caused by solar homeowners and has assigned an arbitrary rate of compensation that is significantly less than the retail cost of energy. In addition, BG has levied a monthly fee on solar

[12] *See* https://www.energy.gov/energysaver/grid-connected-renewable-energy-systems.
[13]https://www.energy.gov/eere/solar/solar-integration-inverters-and-grid-services-basics#:~:text=An%20inverter%20is%20one%20of,which%20the%20electrical%20grid%20uses.
[14] *See generally* https://ilsr.org/indiana-dismantles-rooftop-solar/.

homeowners loosely based on the number of KwH produced for the grid. BG does not consider the true value of solar, including the advantage of localized energy production and distribution that reduces wear and tear on the grid.

42. BG's current approach significantly undermines rooftop solar's value, making it cost-prohibitive for BG ratepayers. As the rest of the state and country demonstrate significant growth in rooftop solar systems, BG's current net metering structure unreasonably limits the economic feasibility of rooftop solar.

TAKINGS LAW

43. Relator re-alleges and incorporates by reference every material allegation in the previous paragraphs as if fully re-written herein.

44. The Takings Clause of the Fifth Amendment, made applicable to the States through the Fourteenth…provides that private property shall not "be taken for public use, without just compensation." *Lingle v. Chevron U. S. A. Inc*., 544 U.S. 528 (2005).

45. "While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922).

46. A total regulatory taking occurs where regulations completely deprive an owner of "*all* economically beneficial us[e]" of her property." *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003, 1019.

47. To determine if a partial regulatory taking has occurred, a court must review "(1) the regulation's economic effect on the landowner, (2) the extent to which the regulation interferes with reasonable investment-backed expectations, and (3) the character of the

government action." *Shelly Materials v. Clark Cty. Bd.*, 2005 Ohio 6682 (Ohio Ct. App. 2005) (*citing Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978)).

48. Interestingly, the crafters of the ordinances governing the Bowling Green BPU recognized the importance of the U.S. Constitution and its relationship with local regulation. Specifically, the BG BPU shall approve no regulation that is "repugnant to the ordinances of the city, nor to the constitution or laws of the state."[15]

A. Regulatory Taking of Relator's Property

49. Relator re-alleges and incorporates by reference every material allegation in the previous paragraphs as if fully re-written herein.
50. Relator cannot sell its home for fair market value after the implementation of Rider E.
51. The home was on the market for over sixteen (16) months without a single offer. Even lowering the asking price did not affect the Property's marketability.
52. The housing market was booming during the period Relator maintained the listing. Similar homes without solar energy systems were quickly sold during the same timeframe.
53. Rider E has prohibited Relator from selling the Property and destroyed the investment-back expectations for the solar energy system.
54. Rider E is arbitrary, unjustifiable, and has cost Relator thousands of dollars. Harper and Jansto will likely not see their investment come to fruition in their lifetimes.
55. Thus, Relator has suffered at least a partial regulatory taking.

[15] **§ 52.02 BYLAWS AND REGULATIONS.** The Board of Public Utilities is authorized and directed to make bylaws and regulations as may be deemed necessary for the safe, economical, and efficient management, operation, and protection of the electrical distribution system, and for the construction, reconstruction, replacement, removal, improvement, maintenance, enlargement, additions, and connections to the electrical distribution system. Such bylaws and regulations shall not be repugnant to ordinances of the city, nor to the constitution or laws of the state.

COUNT I

56. Relator re-alleges and incorporates by reference every material allegation in the previous paragraphs as if fully re-written herein.
57. The actions by the City as described above constitute an uncompensated taking of the Relators' property.
58. Relators' only recourse is this Petition for Writ of Mandamus to force the City to begin eminent domain proceedings for this taking; in other words, an inverse condemnation proceeding.

WHEREFORE, Relators pray that a writ of mandamus issue to the Respondent directing it to institute eminent domain proceedings in the Wood County Court of Common Pleas under R.C. § 163.01 *et seq.*, to fix the value of the property the City has taken and to compensate Relators.

Respectfully submitted,

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