



# Town of Abington

500 GLINIEWICZ WAY  
ABINGTON, MA 02351

**Zoning Board of Appeals**  
**781-982-2100**

**Minutes**  
**June 18, 2015**  
**Cotter Room**  
**7:00 p.m.**

**Members Present:** Lisa Bezanson, William Mullen, Sean Mullen  
**Absent:** James Haney, John Shepard

7:00 p.m. **Continued hearing, petition of Borrego Solar Systems, Inc., 55 Technology Drive, Lowell, for: a special permit to install two fenced solar systems, with gravel access from Karen Lane, under Abington Zoning By-Laws Sec. 175-21B-5. The property is located on Assessors Plan 22, Plots 35 & 36, in the R-40 Zone.** Voting members: Lisa Bezanson, William Mullen, Sean Reynolds. An email was received from Mr. Shepard informing the board of his absence due to surgery earlier in the day, requiring Mr. Reynolds to assume the position of third voting member.

Atty. Richard Serkey, representing Borrego - e-mailed to board as well as mailed to parties of interest two documents. The first document is a memo from David Albrecht listing 10 respects in which project has been modified since original submission this year in response to comments by neighbors, boards and committees. The second document is a list of 15 conditions that Borrego would accept if petition approved, many taken from the solar bylaw that was passed earlier this month, even though that bylaw doesn't govern this project. In attendance is Dave Albrecht and John Sarno from Borrego, as well as Dennis McCaffrey and Jonathan Salsman from National Grid. Mr. McCaffrey is the Community Outreach Representative for National Grid.

Opened to table. Mr. Reynolds - there's no additional evidence other than the two documents? Atty. Serkey - correct.

Mrs. Bezanson opened it to the floor for new comments.

William Sampson, 134 Karen Lane - could they read info submitted; there are neighbors here that weren't on the abutter's list and don't know what they are referring to. Atty. Serkey read the memo and conditions (attached).

Rich Ahern, 160 Karen Lane - questioned the motion from original meeting. It was explained that the motion to deny wasn't seconded.

Rich Nigrelli, 340 Diane Circle - how many panels are going up? David Albrecht - 4256 panels. Mr. Nigrelli - is there any way of shutting panels off? Concerned about hazardous materials in panels if they caught on fire. He had checked on line, concerned about silicone, toxic chemicals. If that cloud goes into residential areas, can they guarantee that no one will get sick and no toxic elements will disburse?

Dave Albrecht - there are no hazardous, toxic materials in these panels. Mr. Nigrelli - when you're talking about panels, you're talking about silicone, plastics; what are the panels made of? Mr. Albrecht - aluminum, silica, metals. Mr. Sarno - there is no danger of shock if touched. Jonathan Salsman - panels are made of aluminum that is wrapped in glass. Mr. Nigrelli - it's still a hazard. Mr. Sarno - they haven't heard of any fires on panels. Mr. Nigrelli - they do catch on fire, there are toxic chemicals in the panels.

Sean Reynolds - what does fire department need to put out a fire. Mr. Sarno - there is a switch. There aren't hazardous materials. Systems are grounded. Mr. Albrecht has never heard of any fires; Borrego has been putting in these systems for 34 years. There is vegetable oil in panels. Mr. Salsman - even if a panel caught on fire, it wouldn't spread to another panel due to glass. Mr. Nigrelli - concerned with grass fire; feels they are telling the positives, but not the negatives. You can't tell him that these panels made of different things aren't bad; they are manmade, and you're talking thousands of panels. A tree could fall on them; there are hazardous chemicals. Mr. Albrecht - there are no hazardous chemicals or plastics.

Brian Barry, 123 Karen Lane - company should have criteria for safety procedures. Mr. Albrecht - they train safety personnel on the equipment. They don't use silicone, it's silica.

Kathy Ross, 394 Rockland Street - feels more uncomfortable with each meeting. Do they respond immediately to problems or just check periodically? Mr. Salsman - explained process; if there is a problem with the system, they go out right away. National Grid checks sites periodically; they haven't had one incident in the last 5 years.

Allan Ross, 394 Rockland Street - is there a construction management plan - hours of operation, how many days of week? Could trees be a condition; Harvey Hurvitz says the agreement with Borrego isn't binding. Atty. Serkey - has to be built in conformity with plans; if they can't cut trees, they would have to go back to board with modified plan or waive tree cutting. Mr. Albrecht - they would abide by town's working hours. They don't work on Sundays. Mr. Ross - questions on #12. Atty. Serkey - that would be on National Grid. If special permit is granted, the 15 conditions would be part of the decision which would be recorded with the Registry.

Eileen Beltis, 138 Catherine Drive - there is solar farm in Braintree and talked about some of the other locations. Showed photos on her phone that she had taken. Mr. Salsman - they aren't their sites (National Grid). Why did they choose Abington? Dennis McCaffery, National Grid - it would be a satellite station. Mr. Salsman - this location is to reduce load to feeders, to integrate more solar in Massachusetts, to be more renewable community.

Rich Nigrelli, 340 Diane Circle - asked about BELD in Braintree - does Braintree get it or does National Grid? Mr. McCaffery - they didn't build that; they have natural gas in Braintree.

Kathy Ross, 394 Rockland Street - doesn't have objection to solar power in Abington, but solar farm doesn't belong in R-40 district. She is concerned with number of panels.

Rich Ahern, 160 Karen Lane - this is based on plans that trees are going to be cut at the back of Cape Cod Lumber. Harvey is saying no trees will be touched. Why aren't they voting on that plan? Atty. Serkey - has letter of intent signed by CCL that allows tree cutting. Based on that letter of intent, the plans before the board were submitted. If Borrego is unable to cut trees on CCL property, Borrego will have to decide whether to forego cutting or will have to resubmit a petition to this board to modify plans to reflect the fact that that no tree cutting will be allowed on CCL property. As far as Mrs. Ross' comment on solar facility in residential zone, he has stated repeatedly that anyone who bought a home in the R-40 zone was on notice that a utility was a special permit use. They have documentation from National Grid that this facility qualifies as a utility and as such is allowed to apply for special permit, because the by-law of which every purchaser is presumed to be cognizant, provides that this is a special permit use. Mr. Rourke and his contact with Borrego, and Borrego in its application is merely utilizing the bylaw as it is provided when it filled out its first application.

Mrs. Ross, 394 Rockland Street - bylaw when it was enacted years ago didn't see solar farms coming at the time. Atty. Serkey - bylaws provided it and a solar facility is a utility, and that is the provision that Borrego is applying under and that Mr. Rourke signed his agreement with Borrego under. That is the measuring stick of this operation.

Mr. Reynolds - that is the State law about solar energy he is referring to? Atty. Serkey - no, he is talking about the Abington bylaw referring to a utility as a special permit use, which at the time of the original submission provided that this use was allowed by special permit in all zones in the Town of Abington. The State statute states that no town bylaw can unreasonably restrict or regulate the location of solar facilities in particular. Those were the bylaw and statutory provisions that they were operating under. Mr. Reynolds - the court never really defined what a solar use is. Atty. Serkey - Ch. 40A Sec. 3 defines what the town may not unreasonably restrict or regulate and it refers to solar facilities, of which this is one, just like this is a species of utility which under the bylaw is a special permit use. Mr. Reynolds - didn't read it that way, it didn't touch the definition of solar use, whether it's site plan or large facility, they chose not to address the issue in the case Atty. Serkey submitted. Atty. Serkey - what governs this is bylaw in place in January.

William Sampson, 134 Karen Lane - how come they didn't know Borrego would sell out to National Grid? Whole length of street is impacted. Is Abington getting anything out of this? Mr. Salsman - it will benefit National Grid customers and pay the town approximately \$500,000 taxes over 20 years.

Rich Ahern - re tree cutting. Harvey won't allow it. How much smaller will it be if they can't cut Harvey's trees? Mr. Albrecht - it would affect production; it would be built the same, just have more shade.

Mr. Albrecht - as far as notification, everyone that should have been notified were notified. Atty. Serkey - in every meeting it has been made clear that this was for National Grid.

Brian Barry, 123 Karen Lane - re notification to abutters. Atty. Serkey - they used the abutters list that was furnished by the town to Borrego. Mrs. Bezanson - the town generates the abutter's list. Atty. Serkey - the bylaws give the specifics of who should be on the list, should include everyone within 300 feet. Mr. Barry - there are big homes on Karen Lane and they should have been notified, bylaw is

stupid. Atty. Serkey - they operated under the bylaw, went by that list to send out copies of the memoranda, which he didn't have to do. Mr. Barry - feels they are trying to slip this in without really going to the heart of the problem. There are 57 homes there. Why should it go there? There are other places for a solar farm.

Karen Butler, 52 Karen Lane - concerned with safety for neighbors and children. They have a nice, quiet area. There will be trucks and equipment, construction. Mr. Albrecht - construction will take about 5 months. First 6-8 weeks they will be bringing in equipment. After that there will be electricians, fence contractors with regular cars and trucks. After panels are up and it's done National Grid comes in and accepts it, they are on site once a month to maintain it. Re safety, there will be 8' high fence, mini mesh. Ms. Butler - there will be constant trucks up and down the whole area. Mr. Albrecht - it will be 6-8 weeks with contractors building the system. They have to abide by the town's regulations for construction. They will work with neighbors and police as far as safety with trucks coming in and out. They can get police details when trucks are coming in, which Borrego would pay for. Dennis McCaffrey - they will work with the town, permits will involve conditions, which will involve hours, how many police details, etc. Ms. Butler - will they have neighborhood liaison to work with them? Atty. Serkey - condition 7 addresses that. Ms. Butler - feels there is a lack of communication. Mr. Albrecht - there will be a representative from National Grid during construction, and Borrego will have a project manager and superintendent on site almost every single day. They will be the neighborhood's contacts. They can put fliers in mailboxes to communicate what is scheduled.

Abutter - what modifications would be made to poles on Karen Lane? Mr. Salsman - poles would be installed towards the end of the project, there won't be double poles.

Abutter - doesn't feel it's right for residents of Abington; cutting trees doesn't seem right to her. It's open land, and it's what they want when they bought in the Town of Abington. Doesn't want to lose valuable forest land. In state guidelines, they strongly discourage cutting down trees and clearing land. Concerned with the safety of the neighborhood with all the little children. Regarding notification, it shouldn't have just been the abutters - it should have been everyone on Catherine, Karen, Linwood, Rockland Streets.

Rich Ahern, 160 Karen Lane - how many trucks a day? Mr. Albrecht - there will be multiple trucks for the first 6-8 weeks to take down trees and bring in materials.

Ed Miller, 159 Karen Lane - against it. It's a residential neighborhood and doesn't belong there. There is an increase in kids in this area. He is sure kids will get in there. He called National Grid a month ago re damage and hasn't had a response from them yet.

Elaine Miller, 159 Karen Lane - has done a lot of research. Questions on construction. Atty. Serkey - Condition 16 could be willingness to pay for police details that would be required. Hours of operation could be mandated by this board or building inspector as Condition 17. Condition 18 could be additional neighborhood outreach before the removal of trees and delivery of panels to whatever prescribed radius the board would want, to provide advance notice for work schedule. Condition 19 could be that

there would be no double poles. Atty. Serkey - Borrego has been nothing but forthcoming in terms of willingness for conditions.

Mr. Salsman - Karen Lane only has single phase now; this won't disrupt anything. Mrs. Miller - possibility of fire, lightning hitting panels. Concerned that Fire Dept. would have to have special equipment. Signs on outside of fence - would they list high voltage? Yes. Mrs. Miller - teenage kids will get in there. Property values in other parts of the country have dropped dramatically, up to 30%. No matter how it's screened, they will see it. They will be looking over 8' trees and 8' fence. Does it have state approval through Department of Energy, EPA, and MA Energy Center?

Mr. Albrecht - MEPA - they aren't anywhere near that threshold. Project is now 286' from the Millers. They have reduced tilt angle on panels to 9', and reviewed elevations. Elevations drop 40' across property. They will guarantee the trees that they put in for one year. There are 140' of trees that aren't going to be touched at the end of Karen Lane in this plan.

Elaine Miller, 159 Karen Lane- brought up sound levels. Mr. Albrecht - would be happy to do pre-development sound study, take baseline and measure it. They can add condition with baseline and if they exceed 40 decibels, they will work with National Grid, possibly put up solid wall inside the fence. Mr. Salsman - when you are on site, the inverters are so quiet, sometimes you can't tell if they are on. He would be glad to take someone to one of their sites to see. Decibels discussed.

Elaine Miller - how will they keep down dust or dirt? Mr. Albrecht - it is compacted gravel. They re-grade road flat after construction, they can have water trucks on site to keep everything wet.

Elaine Miller- quoted definition of special permit from bylaws: "...may be issued if it is not injurious to public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare"... - doesn't comply with this project.

Closed to floor with no more comments from audience. Atty. Serkey - must be measured by State statutes promulgated by the State legislature signed by the Governor, which says that no zoning ordinance or bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy except when necessary to protect the public health, safety and welfare. They start with the provision of the State law that offers a special degree of solicitude for this type of facility; then they come to the Town's Zoning Bylaw. The Bylaw states that public utilities in general, not just solar facilities, are allowed by special permit in every zone in the Town of Abington. The special permit process involves both in the State level and the town level. The special permit which is defined in the Bylaw is a permit which may be issued by the special permit granting authority (the ZBA) to authorize the use which would not be allowed generally or without restrictions throughout any particular zoning district, but which is controlled as to number, area, location, relation to the neighborhood and other characteristics would not be injurious to the neighborhood. In their memorandum they have offered 15 conditions and added four more. They listed ten revisions and added one tonight to summarize how this project has changed since it was originally submitted.

The Board members' decision has to be based on the statute and the bylaw and it has to reflect the revisions that have been made by Borrego and the conditions that Borrego has said it is willing to comply with. The decision is not a popularity contest; because if it were, they would have lost - the land owner, Borrego and National Grid. The decision has to be based on statute, bylaw and special permit process. Being a special permit granting authority member means having to do something that's not popular, but you have to do it because the state law or the zoning bylaw provides otherwise. Atty. Serkey urged board to be mindful of those yardsticks. It may not be believed by many of the people in the audience, but he has empathy for people that feel they aren't being respected by either the state law, the bylaw or the landowner or the contractor or the utility operator. There is a feeling that this is being foisted upon them. Atty. Serkey brought up other uses that would be more distasteful in this area. The rules that are applicable here have no restrictions that prevent this facility to go on this particular site. He empathizes with the concerns of the neighborhood, that they are being asked to have an unfamiliar use enter their neighborhood; but the fact of the matter is that the opposition and outrage would be more appropriate for another type of use. This is designed to save energy and make the environment that we all live in a better environment. There has been in his opinion an overreaction to what this use would mean and the use of a solar facility is being inflated with something far more noxious.

Atty. Serkey thanked board for the time spent and patience exhibited. He understands it has to be three votes tonight. He expressed disappointment that Mr. Shepard wasn't here. He understands that he had hand surgery and was told he could not make decisions for 24 hours. He didn't know why the matter was continued to tonight if that surgery was planned. He hopes Mr. Reynolds will consider it on criteria that is presented. If he makes a decision on the basis of the criteria - the statute, bylaws and special permit process, reflecting the changes that have been made, as well as the conditions they have offered, to turn this down might not be justified in his opinion, but obviously he is an advocate for the petition.

Sean Reynolds - thanked everyone for coming to so many meetings. Thanked Atty. Serkey for his passion for the law. He (Mr. Reynolds) still struggles with intent of the bylaw. That is the strongest issue he is struggling with. Mr. Reynolds quoted from the Handbook of Massachusetts Land Use and Planning Law, page 286, *On the other hand, "refusal to grant a special permit does not require detailed findings." If the board finds any permissible reason to deny the application, its decision will be sustained. The granting authority has the full range of discretion in shaping its decision. Neither the Zoning enabling Act nor the town zoning by-law gives...an absolute right to the special permit... The board is not compelled to grant the permit. It has discretionary power in acting thereon. The board must act fairly and reasonably on the evidence presented to it, keeping in mind the objects and purposes of the enabling act and the bylaw.*

Mr. Reynolds thanked Atty. Serkey for the most recent evidence, there are at least 20 conditions. He, Borrego Solar and National Grid have been very giving in trying to make this work, but 20 conditions is quite a few. He is looking at the interest of public health. Specialized training is required for police and fire. It started as a site where you could view it and have gone to because it is in a residential area, and now have to try to hide it. That concerns him because you're not going to have visual traffic going by

seeing if kids are in there. There aren't enough police and fire and passersby. Is concerned with kids getting in there. There would not be enough passersby in this area. Has concerns for fire and safety. It really doesn't belong there. It is a dangerous nuisance. He hasn't changed his position. They have to take into account the safety of police and fire as well; special training is required. However they are responding to this site, do we have to place them in that situation where they might have to save lives in a residential area where an industrial area they could make other decisions in terms of whether to let it burn and stay away or not having to evacuate the area. That is where he is putting his decision - in the public health area and the intent of the bylaw. He came to the ZBA to represent the voters.

There was nothing else from the applicant.

Motion by Mr. Mullen to approve with 20 amendments submitted, seconded by Mrs. Bezanson, vote - 2 aye, 1 opposed (Mr. Reynolds). Motion didn't carry.

Motion by Mr. Reynolds to deny the petition, no second.

Motion to adjourn the meeting at 8:55 p.m. made by Mr. Mullen, seconded by Mr. Reynolds, unanimous.

Respectfully submitted,



Nancy Hurst



**BORREGO SOLAR**

**MEMORANDUM**

To: Parties in Interest

From: David M. Albrecht, P.E., for Borrego Solar Systems, Inc. (888) 898-6273  
dalbrecht@borregosolar.com

Re: Application for Special Permit by Borrego Solar Systems, Inc. ("Borrego")

Locus: Assessors Map 22, Lots 35 and 36

Date: June 15, 2015

Although not required by by-law or state law to do so, I am taking the extra step of again pointing out that the plan that was before the Zoning Board on June 11, 2015 revised the plan that was originally submitted to the Zoning Board in the following respects:

1. System size reduced by greater than 20 percent
2. System shifted by over 130 feet from the westerly neighbors
3. System shifted southerly from northerly property line from 25 foot setback to 74 feet
4. Utility access corridor to Rockland Street eliminated, significantly reducing wetland resource impacts in the same area
5. Amount of tree clearing reduced by nearly 2 acres
6. Amount of gravel access road reduced by 16,000 sq.ft.
7. 51 - 8 foot evergreen trees added along westerly fence line
8. Additional plantings added at end of Karen Lane
9. 500 or more pine saplings proposed south of the system
10. Security light added at end of Karen Lane, subject to Town approval.

If you have any questions, please call me or send an email to me using the contact information set forth above.

Thank you.

cc: Zoning Board of Appeals

## MEMORANDUM

To: Abington Zoning Board of Appeals  
From: Richard M. Serkey  
Re: Application for Special Permit Approval by Borrego Solar Systems, Inc.  
("Borrego")  
Locus: Assessors Map 22, Lots 35 and 36  
Date: June 13, 2015

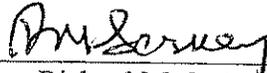
Borrego is willing to accept the following Special Permit conditions, many of which have been drawn from ZBL Section 175-36 (Large-Scale Ground-Mounted Solar Photovoltaic Installations), which was adopted at the June 8, 2015 Annual Town Meeting, even though this Section will not apply to this project:

1. The facility shall be built in substantial compliance with:
  - a. Plans entitled: "NGRID Site Plans 198 Karen Lane, Abington, MA Borrego Solar 1115 Westford Street 2<sup>nd</sup> Floor, Lowell, MA 01851 Date: 02/02/15, Revised 02/09/15....06/10/15".
  - b. Project Narrative dated May 14, 2015, as revised on June 10, 2015
2. A minimum of 75% effective screening from adjacent properties, including upper levels, must be in place within 5 years of project completion.
3. The maximum decibel level at the property lines is to be no greater than 40 db.
4. Lighting shall be reasonably shielded from abutting properties. A new light pole will be installed at the end of Karen Lane for purposes of additional security, subject to approval by the Town.
5. Signage, in compliance with Town requirements, identifying the owner and providing a 24 hour emergency contact number, and devoid of any advertising, shall be installed prior to the commencement of operation.
6. No hazardous materials used on the site shall exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the DEP pursuant to Mass DEP Regulations 310 CMR 30.000 or exceed any applicable requirements of the DEP.
7. All means of shutting down the facility shall be clearly marked, and, upon request by the Town and at no cost to the Town, training shall be made available to allow emergency response personnel to safely shut down the facility in the event of an emergency. The facility operator shall identify a responsible person for public inquiries throughout the life of the installation. All changes in the identity or contact information for the responsible person shall immediately be brought to the attention of the Town.
8. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the facility.
9. Herbicides may not be used to control vegetation.
10. The operator shall maintain the facility in good condition at its expense. Maintenance shall include, but not be limited to, snow removal, painting, structural repairs, and integrity of security measures. Site access shall be

maintained to a level acceptable to the Fire Chief and Emergency Medical Services.

11. Any material modifications to the facility shall require approval by the Zoning Board after a noticed public hearing.
12. If the facility has reached the end of its useful life or has been abandoned through intent or discontinuance for two years or more, it shall be removed. The owner or operator shall physically remove the facility no later than 120 days after the date of discontinued operation. The owner or operator shall notify the Zoning Board by certified mail of the proposed date of discontinued operation and of the plans for removal. Decommissioning shall consist of:
  - a. Physical removal of the panels, structures, equipment, fencing and transmission lines.
  - b. Disposal of any hazardous waste in accordance with local, state, and federal disposal regulations.
  - c. Stabilization or re-vegetation as necessary to minimize erosion. The Zoning Board may allow the owner or operator to leave landscaping or below ground structures in order to minimize erosion and disruption to vegetation.
13. Absent a notice of a proposed date of decommissioning or written notice of extenuating circumstances, the facility shall be considered abandoned if it fails to operate for six or more consecutive months without the written consent of the Zoning Board. If the owner or operator fails to remove the facility in accordance with this decision within 120 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the facility, in which case, as appropriate, the cost of removal shall be charge to the owner in accordance with the provisions of G. L. c. 40 §58.
14. The operator shall provide a form of surety, either through escrow account or other means mutually agreed upon with the Zoning Board under G. L. c. 44, §53A, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape in an amount an form determined to the reasonable by the Zoning Board, but tin no event to be less than 75 percent nor to exceed more than 125 percent of the cost of removal and compliance with the requirements set forth herein, as determined by the operator. The operator shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.
15. This special permit is expressly contingent upon the approval of the definitive subdivision plan submitted by Borrego to the Planning Board on May 26, 2015, as the same may be amended, and the subsequent endorsement of same by the Planning Board.

BORREGO SOLAR SYSTEMS, INC.  
By its attorneys,  
WINOKUR, SERKEY & ROSENBERG, PC

By:   
Richard M. Serkey, Esq.  
81 Samoset Street  
Plymouth, MA 02360  
(508) 746-1023  
[rserkey@winokurlaw.com](mailto:rserkey@winokurlaw.com)  
BBO # 451980

cc: Parties in Interest