

**Zoning Board of Appeals  
Minutes of Meeting 6/19/2020  
Virtual Meeting via Zoom**

Members present: Andrea Rogers, Peter Yoars, Llewellyn Rogers, and Jonathan Holter  
Members absent: Doug Pease

Chairman Rogers opened the meeting at 6:00 pm.

\***Minutes** from May 21 and May 22 – Approved unanimously

\***Next Meeting Date:** Thursday, July 16, 2020 at 6 pm

**RE: Masciotra Project**

Richard J. Masciotra  
26 Firehouse Lane, **Map 16 Parcel 191**

\*On Thursday, June 19, 2020 at 6:05 p.m., Chairman A. Rogers opened a duly posted public hearing on the application of Map 16 Parcel 191 seeking:

*a Special Permit within Zoning By-Laws 3.5.5, or any action related thereto,  
to allow the construction of a nonconforming accessory structure –  
garage/guest apartment on a lot located Residential Zone 1.*

A quorum was not met as Member Jonathan Holter had to recuse himself. In addition, while the new owner, David Burgess, was present, the applicant was not represented.

*The board agreed to continue the hearing to July 16, 2020, time to be determined.*

**RE: Kriegstein Project**

Henry J. Kriegstein, Joan B. Kriegstein, Kriegstein Realty Trust  
20 Hubbard Lane, **Map 22 Parcel 11.1**

\*On Thursday, June 19 2020 at 6:15 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 22 Parcel 11.1 seeking:

*a Variance and Special Permit with Zoning Bylaws 4.1.3, 9.1.A or any action related thereto,  
to allow the construction of a nonconforming addition  
to a single family dwelling located on a lot in Residential Zone 3 and Coastal District.*

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present. Email received from applicant's attorney requesting the hearing be continued to the July meeting date. However, if the ZBA is still meeting virtually, they request that it be continued to such time the ZBA holds an in-person hearing.

*The board and applicant agreed to continue the hearing to July 16, 2020, time to be determined.*

**RE: Oak Bluffs Landfill Solar Facility**

Greenskies Renewable Energy / CVEC

347 County Road, **Map 29 Parcel 156, 157, 161, 164, 165**

\*On Thursday, June 19 2020 at 6:30 pm, Chairman A. Rogers opened a duly posted public hearing on the application of Map 29 Parcels 156, 157, 161, 164, and 165, seeking:

*a Special Permit within Zoning By-Laws 12.4 Solar Energy Systems allowed by Special Permit, or any action related thereto, to allow a ground-mounted solar facility and associated electrical equipment to be located on the Oak Bluffs capped landfill.*

A quorum consisting of Chairman Andrea Rogers, Peter Yoars, Llewellyn Rogers, Doug Pease and Jonathan Holter was present.

*Brad Parsons from All Points Technology Corporation.*

Brad Parsons: I will give a brief overview of the whole project and then take questions. The applicant is Greenskies Renewable Energy, they were awarded a contract through the Cape and Vineyard Electric Cooperative (CVEC). The project is a solar project at the Oak Bluffs landfill. CVEC was also awarded a project for the elementary school roof.

This project is a one-megawatt AC 1.3 megawatt DC solar electric generating facility. We have two arrays set and split: one on the western side and one on the eastern side of the site, mainly due to the topography of the landfill itself. Because it is a landfill, we are not puncturing or penetrating the cap of the landfill so the grass itself will remain as it is today.

These are what we consider to be a ballast-mounted system with two different types of racking — racking is what the structural stability that the solar panels are sitting on. Some of them will be in the ballast, or what we call concrete tubs, and those are the dark black circles on the plans.

The other type of racking is just a concrete ballast block that the racking sits on. Those ballast blocks will either sit directly on the landfill cap or in instances where we are in a slope situation they will be placing down a bed of stone to just basically level out the area for the concrete to sit on and then the racking will be mounted to that.

We have applied for a post-closure use permit with MassDEP for this work as well.

All of the electrical equipment will be above ground in cable trace, and that wiring will come from the east side to the west side. We will cross over the existing rip wrap swale running midway down, or a third of the way down the hill — it will cross over not impacting any of the drainage on site. The cable tray will run up to the equipment area which is just to the south side of the existing transfer station.

That equipment area will consist of two container units. They are prefabricated inverter and battery units that will take the DC power from the solar, transform it to AC power and send that over to the transformer and switch gear which will then transform that — what we call low voltage up to medium voltage — and connect out to the grid via a new utility pole and connect in an existing utility pole just behind the transfer station as well.

All of those units and the conduit for those units will be above grade. That's really a requirement of MassDEP with regards to the post-closure use permit and any concerns with methane gas. So it reduces any need for explosion-proof fittings by keeping everything above grade here.

The two container units will sit up slightly on pedestals, the conduits will go underneath them and then back over to the switch gear and transformers as well above grade. The equipment area has two storage systems, and it will have that battery component.

There was a question about the noise from the batteries last time and the air conditioning unit associated with those — their sound is 75 decibels at one meter away or a little over three feet. The sound from those systems will be less than 75 decibels, which basically equates to a washing machine or coffee grinder and air conditioning unit to try and put it into general terms of what that sound level would be. From there it exponentially decreases over distance so on the west of those two container units is really where the medium voltage switch gear and transformers and some of the other equipment that's needed for the facility to connect to the to the grid.

There will be two temporary gravel access drives that will go up to the top of the landfill, to make sure that we're protecting that from any damage during construction and that gravel will sit on top of a geotextile fabric as well.

Looking at the SP tabs of the plans —take a look at the east side of the site. We did show the 50-foot setback. You can see here on the west side on SP-2, that our closest point is up in the northeast corner and we are 71.7 feet from that property line.

On SP-2 of the plan we are closer to the property on the eastern side of one private parcel, but half of the capped landfill takes up the parcel itself already. So the landfill is actually on that parcel and we are doing our best to utilize as much of the flat space as possible on the eastern side, which is the cause for the variance to the 50-foot solar setback. And in some cases, our foundations are showing to be within about a foot and a half to that property line.

In the bottom corner of that property, we're at about 2.8 feet from the property line, a little bit up to the top is a 3.5 feet and then right at the southeast side of the property that one little other dimension is that 1.5 feet there.

Additionally, I know there was concern that this one parcel just to the south of the paper street does have the nitrogen credits for the town and we did get confirmation back from MassDEP that because there is

no asphalt being proposed, and even on that parcel there will be no gravel, that the concrete bases while considered impervious per MassDEP, are not a nitrogen loading concern and therefore, there would be no concern with regards to the nitrogen credits on that parcel.

Andrea Rogers: That's good news.

Jonathan Holter: What does the construction schedule look like and the access to the site — will that be through the existing trash facilities?

Brad Parsons: [Going to DN-5 and EC-1 sheets to show access.] The first one will be coming off the street between the wastewater facility and just to the west of the wastewater facility. There's an access drive, so we will be entering through that gate and heading down south along the western side of the landfill using that area in the southwest corner for some construction lay down and then being able to come up the side of the landfill just off of that point there.

On the western side (see EC-2) our proposal is to come off the parking lot behind the highway garage or Parks Department again, minimizing any impact inside the transfer station. We will have some construction traffic as a result of needing to get the switch gear and the electrical equipment in there. Some of the excavations are associated with that, but we've tried to keep the main construction traffic for the actual array, or as much as we can, away from that area so as not to impact that area.

At one point there was talk about coming off of County road with an access, but with a bike path and other items, felt that that probably wasn't the best access point as it would introduce a new spot where traffic would be entering and exiting that people might not be used to as they would be more or less used to it coming out of the highway garage.

Jonathan Holter: I am concerned about using Pennsylvania Avenue with a lot of construction vehicles, whether coming off Barnes Rd. all the way down Pennsylvania Ave. Will trucks be going up and down Pennsylvania Avenue from Barnes Road or will you use County Road exclusively to get to Pennsylvania Avenue?

Brad Parsons: Based on my understanding of the area, the intent would be to come off of County Road exclusively. It doesn't really make much sense to come down Barnes Road. I don't see a concern with making that a condition of an approval here if necessary.

Jonathan Holter: I like the idea of making that a condition. One of the conditions in 12.4 of the zoning bylaws is the effect on the character of the surrounding neighborhood. Pennsylvania Avenue has a lot of houses and there's already a lot of heavy equipment going up and down the road. I would like a condition that they can only enter and exit Pennsylvania Avenue onto County Road.

Brad Parsons: I see no issue with that.

Llewellyn Rogers: I have a couple of comments and questions. On that private property [southeastern corner]— concerned that close because of liability. We've gone through a few hearings where we've had 2 feet, half a foot, and then get into a legal battle with a private party. I see why you want to be that close. It's too bad that the town didn't acquire this land a long time ago. That way you could have probably produced a lot more electricity.

I'd like to see a good 10-foot buffer between the private property and the arrays. You're going to be doing maintenance on it, running around a lawn machine and will have to go into the private property and I'd rather have that problem solved so you don't have to be going on anybody's private property.

Brad Parsons: To answer that question, or at least have a discussion on that question, part of the concern here is that half of that property is actually the landfill itself. There are probably maintenance activities already taking place on the landfill and I'm unclear whether or not from a zoning standpoint, what they could potentially do on that parcel as a result.

The application to MassDEP [includes] that parcel, it falls under that site application for DEP and is actually under the overall umbrella of this area as well. While we could look at making some shifts, [I don't think we can] make it a full 10 feet without losing some of the electrical generation that we would we would be getting here, especially since we are already taking into account the existing landfill events.

For instance, if you see that one gap in the middle of the array there's an existing vent for the landfill. Some of those items were what was keeping us from being able to shift too much more to that western side. In addition, we're also dealing with shading concerns with the trees to the south, which we're trying to keep all of those in place as well.

Liz Argo/CVEC: Brad, can I ask you also to give a bit of a technical explanation. Why you can't just remove modules, you remove entire strings. And by doing so, you actually do degrade the whole power output substantially. And power equals money to the town.

Brad Parsons: Yes. Even if we were to get to that 10-foot separation here we couldn't just lose like two or three modules or four modules to get to 10 feet — we would end up having to lose a full string.

I don't have the stringing off the top of my head on this site, but it's either 26 or 18 so if we were to lose four modules on one side, we would need to now lose an additional 14 modules there which would then push us greater than that 10 feet.

Llewellyn Rogers: I noticed that you have two different sized panels. The 400 Watt and the 340 or 360 watt. Could you upgrade some of the 340s and if you dismantle a couple dozen and change the other ones over to 400?

Liz Argo/CVEC: Brad, doesn't that have to do with the racking?

Brad Parsons: It partially has to do with the racking due to the topography, but there's also some safe harbor considerations with the modules these days, and how that is played out due to tariffs overall. So pretty much 90%, they've been taking these projects and really trying to balance where they can using these tariff modules or safe harbor modules. So that's why we're seeing this this mix here of modules as well.

Llewellyn Rogers: So you could possibly change the 340s to 400 to offset?

Liz Argo/CVEC: We would have to ask them to re-bid because their design is what the PPA bid is based on, and that safe harbor is [using] these modules. They want to get as much power out of this as they can — that's their goal as well as yours [the Town's]. So if they can trade any modules out, they will.

Llewellyn Rogers: So how far back do you think you can push those without getting into problems? One and a half foot is just, if you slip a little bit. I'm just worried about liability.

Brad Parsons: I understand the concern. It is something we could potentially look at but the topography is really just limiting us. I can tell you my team and the electrical engineers went back and forth multiple times and multiple iterations here and we struggled with this area, with the distance we were away. But using that existing capped landfill and even the potential liability of the landfill being on that other property [was allayed], because the rationale is that as long as we are on the capped landfill we were okay and even with this to make sure that we're maximizing the benefit to the town.

Jonathan Holter: Does anyone know the title to that property. Is it some sort of convoluted title, is there a reason it's sticking in there like a sore thumb that the title is unknown, is there any knowledge on that. Who is the owner?

Brad Parsons: The owner per the land records versus what I have here is Stephen Burke.

Liz Argo/CVEC: Also note that the size is critical and if we can keep the project at one megawatt, the utility is most likely going to "cash out" the net metering credits. If it falls under a megawatt they're not allowed to do that. That's another rationale from the town's perspective, this does not affect the developer — it doesn't matter to them, whether it's a cash out or an allocation project, but for the town, it's rather — not critical, you still get the savings, but there is some preference by many towns to get the cash, rather than to have the credits appearing on your electric bills.

And that's a one megawatt threshold, which is where they're at.

Brad Parsons: We would accept a condition that prior to the issuance of a building permit that we will do and look at what we can here to maximize that distance understanding the concern.

As I sit and stare at [current design] trying to find a spot where some of this can go, but as you can see with how this is laid out, it's very jagged and somewhat awkward. And it's that way because we really did everything we could to maximize this site.

As much as I'd love to say that we could try and move some over to that side, that side is just as bad. And in some cases we're very close together on our spacing between the rows. On the bottom half and the top left hand corner that row spacing is very close there. But then as you move kind of towards the north, you'll see that that spacing increases significantly — that's due to shading concerns because of the topography goes up and back. And so as the modules move down the backside of the hill, they start to shade each other. We ended up being able to take advantage of the topography in the front half and then pushed modules in the back to there as well so trying to find another... even five feet out of this may be difficult, not to say that we could try.

Llewellyn Rogers: Any of the other Members have concerns about that?

Andrea Rogers: No, I think I'd be happy with his best efforts to try, to tweak it as much as they could. I understand the complications Lou raises. But I also understand if part of that land is already in the landfill, I don't think anyone who owns it can expect that it's usable because it's already being used as a landfill. So to me, that property is already declared to be something else. They can't put a house on it, they're certainly not going to live back there.

Jonathan Holter: I agree, Andrea.

Llewellyn Rogers: Peter, do you have comments on the proximity of those close panels?

Peter Yoars: Well to me, what can you do? It doesn't bother me, let me put it that way.

Jonathan Holter: Are there any more questions from board members. (There were none)

Andrea Rogers: Let's move to public comment.

Richard Toole: I am the Oak Bluffs representative to the Board of CVEC and I applaud CVEC's efforts for many years to build renewable energy projects throughout the Cape and the islands. We are the last town [on island?] to not have a solar array on our landfill.

It's a perfect place for a solar array. The land is unusable for anything else. This is going to provide income for the town and it's going to provide us with clean, renewable energy. So my vote would be to please approve this project. Thank you.

Ewell Hopkins: This is Ewell Hopkins from the Planning Board. I just wanted to echo Richard's points, but I also wanted to say that I'm very encouraged by the process of discovery that we've gone through. I believe every functional group within the town, every discipline, has had a crack at this and expressed their points. If all of our applicants went through this level of scrutiny, we'd be in a much better place. So I, representing the Planning Board, wholeheartedly support this project and believe that the due diligence necessary for appropriate oversight has been completed. Thank you.

Andrea Rogers: Thank you.

Richard Toole: Can I just add that I think Brad Parsons has done a great job.

Llewellyn Rogers: Thank you very much for giving us the height of the telephone poles. They are 30 feet so that's within the 32-foot restriction area.

You gave us the noise level. I think if we can include a condition that you investigate to see if you can move these panels a little bit back off the property line. Especially that 1.5 that would be noted, as well as the other condition that Jonathan was talking about of exiting and entering via County Road for all construction, it will be great.

[End of board deliberations]

Andrea Rogers: I think we're ready to vote. Does anyone want to make a motion and we have to have findings and be pretty clear. Remember, all the things that we've been talking about. Does anyone want to make that motion?

Jonathan Holter: I move to allow special permit within zoning bylaw 12.4 to allow a ground-mounted solar facility and associated electrical equipment to be located at the Oak Bluffs capped landfill. After finding that especially in light of all the various boards in the town of Oak Bluffs that have passed on this and the due diligence that we have put the applicant through, we're going to allow this special

permit with the condition that construction and maintenance vehicles can only enter the facility from County Road onto Pennsylvania and exit that way as well. And with the condition that Lou wants to add.

Llewellyn Rogers: The condition that you investigate to see if you can move three of those legs away from the private property in three places and to investigate it, and report back.

Andrea Rogers: There's, there's also zoning bylaw 12.5 and 12.5.1 so we just want to mention that in the permit as findings.

Jonathan Holter: Yes, definitely. The project meets the requirements of 12.5 and 12.5.1 as a large scale system. We've addressed the impacts on open space. We've looked at the visual impact. And we've talked about the extent of grading of vegetative clearing and it's consistent with the planning objectives of the town's local comprehensive plan and we have that in light of the Planning Board's approval of this.

Llewellyn Rogers: A question before we close the motion: would this be a variance or a special permit, seeing that we're non-conforming with that setback. Would that be a variance?

Kim Leaird: Applicant applied for a special permit under 12.4 of the zoning bylaws.

Peter Yoars: I have a question. If we vote on this and approve it, you said you wanted them to report back [after investigating buffer size]. If we approve this, they don't have to come back to us.

Brad Parsons: I believe we can report back through the building department when we apply for a building permit.

Kim Leaird: Also, can I just say I believe you're supposed to make a finding that the benefits outweigh any potential detriment.

Jonathan Holter: Okay, yes, we have addressed that, especially when in relation to the neighborhood and in light of the use of the landfill right now that this is, without a doubt, not more detrimental to the area than the existing use right now.

Andrea Rogers: And I also want to add 12.5.3 for safety and 12.5.4 for monitoring and maintenance which has to do with abandonment and decommissioning. All those should be in the permit.

Jonathan Holter: I think we've addressed all of the various points. I had a chance to review the hour-long Planning Board meeting on this, and a lot of this has also been addressed. I've satisfied myself to that. Have any of any board members not satisfied themselves as to the various things that Andrea has brought up?

[All were satisfied]

Andrea Rogers: Okay, we have a motion. Is there a second?

Llewellyn Rogers: I'll second it.

Andrea Rogers: Any more discussion. Hearing none, all those in favor?

A roll call vote was taken and motion passed 4-0.

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Llewellyn Rogers made a motion to adjourn. All were in favor. Meeting adjourned at 7:15pm.

*Meeting adjourned at 7:15 p.m.*

*Respectfully Submitted,  
Kim Leaird, Clerk/ZBA*

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Approved July 16, 2020