

Mount Jackson
Town Council Regular Meeting

February 8, 2022

-1-

The regular meeting of the Mount Jackson Town Council was held February 8, 2022 at 7:00 PM in the council chambers at 5901 Main Street. Roll call was taken with Mayor Pifer, and Councilmembers Rod Shepherd, Whitney Miller, Bonnie Good, Dennis Andrick, and Roger Rudy in attendance. Councilmember Judy Fultz was absent. Also, in attendance, Neil Showalter, Town Manager; Keith Cowart, Police Chief; Mario Rosso, Finance Director; Erick Moore, Planning and Development Director; Jay Neal, Town Attorney; Debbie Allen, Town Clerk; Darla Odom with The Berkley Group; Dominika Sink with Energix and Attorney Scott Foster. Visitors included Robert and Eleanor Whitehurst, Melinda Monroe, Melissa Miller, Tommy Keeler with Northern Virginia Daily, Larry Ambrose, G.B. Foltz, Randy Doyle, and Jeff Cook. Becky Campbell with First Solar attended electronically through Zoom. Dave Moore from Cornerstone was present to provide Zoom service.

Agenda Additions/Deletions/Changes: None

Hear from Visitors:

1. Randy Doyle stated he had three points to support his position of being opposed to the solar expansion; 1) this community is agriculture and tourism, and a wide-scale industrial solar farm is 180 degrees from that; 2) converting productive farm land into solar would be a negative economic impact; and 3) the long term question of returning the land to its God-created use, is highly questionable. Mr. Doyle stated it may take decades to get the top soil back to what it once was, and that combined with environmental issues such as batteries and disposing of the spent solar panels, raises too many questions. He stated based on the evidence today he feels confident Councilmembers would not be in good position to say they did the right thing by approving this request.

2. Jeff Cook stated Councilmembers need to seriously consider this proposal, that the Town has plenty of solar panels and he does not feel it is necessary to keep adding on.

Remarks & Recommendations from the Mayor: None

Remarks from Councilmembers: None

Presentations: None

Chief of Police Report: Chief Cowart provided the public safety committee report on behalf of Ms. Fultz's absence tonight. The January Police Department calls were 1183; 1047 of those were property checks and extra patrols. There were 24 foot patrols with 0 doors/windows found open. There were 14 mutual aid calls, assisting other agencies such as Fire and Rescue. There was 1 assault call closed by an arrest, 2 calls for petty larceny (1 lead was exhausted and 1 pending further investigation). There was 1 report of trespassing where the victim waived prosecution and 1 ECO/TDO which tied up officers for the weekend. Chief Cowart stated the Town has opened up the position to fill the night time shift police officer, and will stop taking applications on February 28.

Town Manager Report: Mr. Showalter stated he talked to the Town's consultant today regarding the Avondale sidewalks project, and VDOT had asked for two things; 1) the Town Manager to undertake project management classes which he will wrap-up with a seminar next Wednesday; and 2) the Town to prepare a check-off list of things needed. Per VDOT the list is not necessary now, and the Town hopes to receive a bid in place and begin work on sidewalks this summer.

Mount Jackson
Town Council Regular Meeting
February 8, 2022
-2-

Committee Reports:

1. Finance Committee Chairperson, Rod Shepherd stated he will speak under New Business in regards to the audit. He stated the water bills were a few days later than normal this month and staff advised him the post office is now shipping all mail to Richmond to be sorted before it is delivered. He will work with staff to seek a solution, as he does not like residents receiving a water bill that is due in 4-5 days. He stated it was not the Town's fault the bills were late, it is a new process with the postal service. Mr. Showalter added the Town has always mailed water bills on the last business day of the month for the 11 years he has been here, but it is slowing down. He stated citizens can pay online and some have automatic draw, but when they are slow getting to the mailbox it puts the pressure on the citizens, which he does not like.
2. Ordinance Committee Chairperson, Dennis Andrick had no report.
3. Personnel Committee Chairperson, Roger Rudy had no report.
4. Public Safety Committee Chairperson, Judy Fultz was absent.
5. Public Services Committee Chairperson, Bonnie Good had no report.
6. Public Properties & Facilities Committee Chairperson, Whitney Miller had no report.

Consent Agenda: Approval – Minutes of January 11, 2022 Regular Meeting

Councilmember Rudy MOVED, seconded by Councilmember Good to APPROVE the Consent Agenda above.

ROLL CALL VOTE:

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u> Councilmember Fultz
Councilmember Miller			
Councilmember Andrick			
Councilmember Shepherd			
Councilmember Rudy			
Councilmember Good			

5 AYES, 1 ABSENT, motion carried

Old Business:

1. Update on Cases SA 21-01 and SUP 21-01.

Mr. Showalter stated staff worked today to update these cases following the Planning Commission's action last evening, and Ms. Odom is present tonight to review them with Councilmembers. Ms. Odom stated the applicant, OFW Solar Farm, LLC, is proposing to construct and operate a privately-owned public utility, a utility-scale solar facility, on the subject property zoned agricultural A-1. There are two cases before Council this evening which are the substantial accord determination SA 21-01 and the special use permit SUP 21-01.

Ms. Odom stated the zoning ordinance permits a utility-scale solar facility with the approval of a special use permit in the A-1 district. The ordinance contains specific use standards and the applicant is seeking exceptions to those standards. The subject property is 128.6 acres and fronts the southeast line of Turkey Knob Road, the west line of I-81, the northwest line of the railroad right-of-way and generally south of Walker Road. The adjacent project is 526 acres zoned in 2018 to permit a large-scale solar facility, being developed as

Mount Jackson
Town Council Regular Meeting
February 8, 2022

-3-

Mount Jackson Solar I, OFW Solar II and OFW Solar III. The special use permit for that acreage was approved prior to the adoption of the Town's current ordinance. Ms. Odom stated in 2018 the approved conditions addressed some of the typical design and operational standards such as construction activity timing, security fencing, facility deconstruction, and maximum height, and some atypical standards which allowed for some reductions in the setbacks and landscaping requirements based on the approval of an adjacent property owner.

Ms. Odom stated at the public hearing in December there were citizens who spoke in opposition to the request, generally the visibility of Solar I which is still under construction, and concerns about health and environmental risks. The applicants responded to these comments, and offered information regarding the panels and the decommissioning plan. Ms. Odom stated Energix is required to meet federal and state permitting guidelines and are offering landscaping and buffering standards as they had with the 2018 case. At the Planning Commission's meetings subsequent to the public hearing there were questions as to what is being done for Site I, such as stormwater maintenance and the landscaping screen along Georgetown Road. Since that time the applicant has met with area property owners and have hired a contractor to complete the landscaping, and a contractor to work on the stormwater facilities and the final ground stabilization. This is a normal process, and required prior to the applicant receiving a certificate of occupancy. The applicant is waiting to plant the vegetation and begin final site stabilization when the weather improves.

Ms. Odom stated two things are important for consideration for land use decisions; 1) the comprehensive plan, and 2) the zoning ordinance as it relates to findings relative to the special use permit. The future land use map of the Town provides that the subject property is designated for industrial use to promote economic development on large tracts while ensuring the development is compatible with the character and history of the Town, using regulations as necessary to prevent pollution of water, land, air and other natural resources.

Ms. Odom stated on February 3 the applicant submitted a revised conceptual plan. The exceptions to use standards deal with the facility location, setbacks, buffer widths, screening and landscaping, slopes and grading, a wildlife corridor and timing of the facility. The current ordinance requires a 1 mile separation for facilities over 400 acres. In this case this facility would be directly adjacent to the site zoned in 2018 so the applicant is asking exception to allow for OFW Solar IV to be developed as part of the other solar facility. The setback exception request is 50 feet from all property lines, but will provide a 200 foot setback adjacent to the single family dwelling at 3126 Turkey Knob Road, owned by Melinda Monroe. The applicant is seeking an exception to the 100 foot buffer area from all property lines to have a 40 foot buffer, except for adjacent to Ms. Monroe. The applicant is looking for screening and landscaping exceptions to retain existing vegetation and supplement that with fast growing evergreen trees planted 15 feet on center and staggered, which would grow to a mature height of 30-40 feet, similar to the planting proposed with the current case. One new addition is 10% of the ground cover will be pollinators as well. They are proposing to plant all of the landscaping for Solar IV eighteen months prior to construction. The applicant would plant a smaller height tree at that time and during construction those plants would have the ability to reach a height that would help provide screening ahead of time. Along the railroad track they are proposing a 50 foot setback and maintain any natural vegetation. The applicant would reserve the plantings along that boundary until such time the rails-to-trails project begins construction, at any point on that trail. The applicant is asking for an exception to the wildlife corridor, which currently requires it run through the facilities. The applicant is proposing to allow a wildlife corridor within the setbacks on the southern end of the subject property as well as along Turkey Knob Road. They will also have a wildlife corridor across Turkey Knob Road between Solar I and II, and between Solar II and III because fencing for each property will not connect.

Mount Jackson
Town Council Regular Meeting
February 8, 2022

-4-

Ms. Odom stated last evening the Planning Commission approved SA 21-01 with a 4-1 vote and offered that consideration must be given to the existing land uses and the appropriateness in their opinion of the expansion of the existing utility-scale facility. Regarding compliance with comprehensive plan the Planning Commission found that as conditioned it would be appropriate industrial land use in accordance with the plan. Ms. Odom stated tonight Councilmembers action would be to affirm the Planning Commission's determination, reject it, or refer back to the Commission asking them to hold another public hearing. If Councilmembers need additional time to make a determination they have the option to defer as well. Ms. Odom stated after consideration of public input and the Planning Commission's recommendation should Councilmembers determine it appropriate to accept their determination, staff would support that acceptance. While the plan does designate the property for industrial land use promote economic development opportunities, consideration of the proposed land use as an expansion of the large adjacent solar facility may be appropriate as conditioned with the special use permit. Under such conditions the proposal satisfies the criteria, location, character, and extent as specified by the code of Virginia. In addition, the comprehensive plan promotes environmental responsibility through development that preserves clean air and water, and as a renewable energy source the solar facility would be considered a responsible action.

Ms. Odom stated last night the Planning Commission voted 4-1 to recommend approval of SUP 21-01 subject to 35 conditions in Attachment A and Attachment B which includes the textural statement and the conceptual plan last revised February 3, 2022. The Planning Commission found that as conditioned the impacts of the solar facility are mitigated on area properties and that the use is compatible with the other area land uses across the street approved in 2018. The facility must be constructed and operated in compliance with state and federal laws and permitting requirements. If after public input and consideration of the Planning Commission's recommendation the Council determines it would be appropriate to approve this request, such approval should be subject to the recommended conditions mentioned above. These conditions address the project scope and operation liability, and require liability in many aspects of construction and operations to ensure that there is involvement from, and training for the Town's public safety personnel, and that there are checks and balances in place that would help to determine that the site is constructed and operated in accordance with the laws. The conditions also must address security fencing and fire safety site maintenance, exceptions to the ordinance standards as outlined in the textural statement, and any applicable federal, state and other local regulations.

Ms. Good asked if there is any particular section of the comprehensive plan Councilmembers must consider, or only the character and history. Ms. Odom stated Virginia code 15.2-2232 requires an affirmative determination that the general or approximate location, character and extent of the public facility is substantially in accord with the Town's adopted comprehensive plan. Mr. Rudy stated the special use permit case mentions 35 conditions that have to be met, which are very detailed and highly specific, and asked who is responsible for monitoring these conditions are met. Mr. Odom stated the Town would monitor the conditions.

Mr. Andrick asked Larry Ambrose to inform Councilmembers what he learned in regards to the solar panel safety. Mr. Ambrose stated he attended a farm show and Paradise Energy Solutions, based out of Harrisonburg was there and familiar with Mount Jackson's solar facility. Mr. Ambrose asked their representatives if there is anything in the panels that would be toxic to the environment and they indicated no. He stated he has their contact number and Councilmembers may call them if they have further questions. Ms. Good stated it is still a concern as her research shows many towns, counties, and cities will not use these panels because there is no definitive answer on their safety. Ms. Good stated there is documentation to show broken panels do leach Cadmium Telluride. The documentation from First Solar say the panels are insoluble, but insoluble does not

Mount Jackson
Town Council Regular Meeting
February 8, 2022

-5-

make it safe, toxins can still be carried by water into the river and harmful to fish. Mr. Andrick stated these panels do not leach and asked Ms. Odom if she had further information clarifying that. Ms. Odom stated the panels have to meet EPA standards and are found to be non-toxic. Mr. Showalter stated rather than staff give testimony he would prefer to turn this conversation over to the applicant and allow them to talk about their product. He does not want to give the appearance of advocating one way or the other. Ms. Miller stated she would love to hear the applicants' thoughts on the subject, and asked under what circumstance would lead the EPA or other agencies to have a safety concern.

Ms. Campbell stated First Solar has been producing this technology for over 20 years and have deployed more than 18,000 projects in 45 countries and have never had a single incident of their technology leaching chemicals into the ground. They have had their technology go through some natural disasters, one being a project in California that sustained a direct hit by a tornado. That project was on federal land and the clean-up had close federal scrutiny and there was no evidence of any contamination after that episode. Ms. Campbell emphasized the reports that do show evidence of leaching did not use First Solar's technology. One of the studies used a product that is not commercially available and essentially applied a semi-conductor to a sheet of glass not encapsulated, leaving it free and exposed to the elements. In that case true rainwater was possible to get the semi-conductor off of that one sheet of glass without any protective layer over top of it, but that is not what First Solar's product is. She stated they have a first layer of glass, apply the semi-conductor and then use an industrial adhesive to apply a second layer of glass on top of that so it is fully encapsulated, and the semi-conductor can not be exposed to the elements. There is another report that did use their technology but the process they used to prepare, analyze and deliver the results essentially mimicked First Solar's recycling process instead of what you would expect to see in real world conditions. It did not follow EPA protocols in preparing samples or testing like you would use to characterize hazardous waste, but instead ground the panels up to a fine dust, put them in an acidic solution and after a period of time they were able to get the semi-conductor off. Ms. Campbell stated she is aware there are studies out there that seem credible, but they would not be representative of what you would expect to see in the field. She will be happy to share a large library of scientific reports that did use standard testing procedures with their technology including a report from U.S. Department of Energy, a national renewable energy laboratory that looked at their technology under various conditions and can speak to its safety and environmental integrity.

Ms. Good stated regarding the California example, she read the shattered panels had to be treated at a hazardous waste facility, and why would that be if they are not dangerous. Ms. Campbell stated California has its own definition of hazardous waste that goes above and beyond anything other states use. That specific project was disposed of under California laws but it was also tested according to EPA's standards and protocols and was classified as non-hazardous waste at a federal level. Ms. Miller asked if there would be a natural disaster, is there a particular timeframe to clean up before there would be a reason for concern. Ms. Campbell stated obviously it would be in the owner and developer's best interest to handle damages quickly so the project can continue producing energy, but she was not aware of a particular timeframe from a contamination standpoint. She stated when their modules break they tend to have hairline fractures, not a complete separation of the two sheets of glass, where you might have a concern of the semi-conductor being exposed to the elements. Ms. Miller asked if there is a specialized clean up crew, or special skills needed to remove damaged panels. Ms. Campbell stated not that she is aware of other than protective gloves for the glass, but referred to Ms. Sink to respond. Ms. Sink stated currently there are a few broken panels on Solar I and they have crews removing them to send to the recycle facility with no specific protocols.

Mount Jackson
Town Council Regular Meeting
February 8, 2022

-6-

Mr. Andrick stated he has prior work experience related to solar and there was a hail storm in Winchester where quite a few solar panels were damaged and nothing special had to be done to remove them. Mayor Pifer asked if the batteries are recycled. Ms. Sink stated there is a possibility to recycle them, due to a recent development with electric vehicles and storage for energy, and an emergent industry is looking at recycling that technology. Mayor Pifer asked what the life of the battery is, and Ms. Sink stated they have a 20 year lifespan on average, and the technology can go through augmentation that extends the life gradually. Ms. Good asked if the Town would get charged for decommissioning and sending the panels to Ohio be recycled. Ms. Sink stated no, it is their cost to bear which is included in the surety bond, and the decommissioning plan.

Mr. Neal stated there is an initial expert report calculating the cost, which is reviewed every 5 years, so that if the cost goes up the bond has to be increased. One of two vehicles can be used; either an irrevocable letter of credit or a bond from the insurance company. Mr. Neal stated per Scott Foster, a bond is used approximately 75% of the time mainly for the purpose of financial statements. If issued, irrevocable letters of credit receive collateral from the company and the bank is required to pay the expense, monitored and updated every 5 years. For bonding the insurance company relies upon financial resources of the company which cannot be canceled. Mr. Neal stated the applicant has agreed to provision in the siting agreement that if ownership ever changes the company is to be notified within 21 days of that occurring, and the Town is entitled to receive written acknowledgement at least 5 days before the transfer occurs and can void the transfer if that does not happen. Mr. Shepherd asked if a bond is in place with the current proposed siting agreement. Mr. Neal stated not until construction commences and the amount can be determined. Ms. Sink stated the estimate for construction to commence is 2-3 years. Mr. Shepherd stated construction has already started on Solar I, is a bond in place for that project. Ms. Sink stated that project was approved under a different ordinance so the requirement is the bond has to be posted before construction is finished.

Ms. Good stated regarding the comprehensive plan, community feedback has been that Mount Jackson is a rural agricultural area, where citizens love where they live. Ms. Miller stated she does not disagree but does not think Councilmembers can hold a landowner hostage as to what to do with their land. Ms. Good stated the Town has already taken out 500 acres of farmland for solar use. Mr. Andrick stated it was initially to be used for commercial land and he did not see any difference. Ms. Good stated there is a huge difference financially regarding how the Town will benefit. She thinks for many people the interest in having the solar farm expansion is the Town will get rich, however the numbers do not indicate that. Mr. Rosso provided information to her regarding the types of revenue the Town receives from businesses, such as business licenses, meals tax, real estate and personal property taxes, and using the smallest amount of each of the 4 categories totals \$912,365 for 35 years. The solar tax revenue estimate is \$2,472,754 over 35 years which equals \$70,650 per year, or \$107.86 per acre.

Mr. Neal stated Exhibit A in the siting agreement shows the projected revenues. There are two sources, machinery and tools tax, and revenue share if the Town adopts an ordinance to take the higher of the two. It would start at \$28,000/year, by year 10 would be \$33,000/year, by year 20 would be \$40,000/year, by year 25 would be \$45,000/year and by year 35 would be \$54,000/year. Ms. Sink added these amounts are the revenue share only and does not include the increase from reassessed value that the Town's real estate taxes will bring. She stated currently this property is agricultural use and commercial use taxes are above and beyond what agricultural taxes are bringing. She stated in addition to Town revenue, the County will receive tax revenue over the lifetime of the project of approximately \$6.5 million. Ms. Sink stated this project merges the benefit of having a different use such as solar to increase the revenue from taxes and adds the benefit of preserving the view shed and not increasing traffic.

Mount Jackson
Town Council Regular Meeting
February 8, 2022
-7-

Ms. Good referred to the Town’s vision statements and ask Councilmembers if they feel this project checks off any of these:

- “Preserve and enhance its natural beauty and cultural heritage”
- “Promote economic development through diverse jobs and business opportunities”
- “Encourage educational opportunities through partnerships with local business”
- “Support wellness for all generations through recreational, cultural, and educational activities to promote a vibrant community”
- “Promote environmental responsibility”
- “Continue to be a visitor destination of choice”
- “Create an environment in which residents and neighbors can live, work and retire in a family-oriented community”

Ms. Good stated the Town did a survey for the adult population and for juniors/seniors in high school, with respect to what things are important to the future growth and development of Mount Jackson. Number 1 for the adults was to protect the water quality and resources, and for the school agers was improving employment opportunities. Other important aspects for both were to provide public safety and preserve agriculture and small town character. Of both adults and students, improving employment opportunities and preserving agriculture is most important, with the Town’s greatest problem being lack of business or employment wage rates. The survey also reflected only 17% of Town residents work in Mount Jackson, they have to leave the Town or County for employment. She stated this new project being proposed is over 100 acres, which could produce job opportunities instead of more solar panels. Mr. Andrick stated the county would not do anything with the roads, because one business in particular considered locating here. Ms. Miller stated she feels this discussion is irrelevant to cases SA 21-01 and SUP 21-01 and to focus on those. She stated personally she would prefer more time to consider it, as Ms. Good brought up a good point, and she is concerned with the CdTe component as well. She would like to see documentation on EPA approval to ease her fears. She is also curious if the recycling program is working, because if these panels last 20-30 years what is being recycled currently.

Councilmember Miller MOVED, seconded by Councilmember Shepherd to DEFER Substantial Accord Case 21-01 and Special Use Permit Case 21-01 until next month’s meeting.

Mr. Shepherd complimented the applicants on a tremendous job of putting a lot of information together. The timing is not good in receiving 40 pages of documents and hour before the Council meeting, but the work appears solid. He stated he is not adamantly opposed to the solar industry, clearly there is a place for renewables, however he is very concerned in regards to screening and plantings, and deferring these cases until March will give the applicant more time to show Councilmembers what a good job will be done.

ROLL CALL VOTE:

AYE

NAY

ABSTAIN

ABSENT

Councilmember Fultz

- Councilmember Miller
- Councilmember Andrick
- Councilmember Shepherd
- Councilmember Rudy
- Councilmember Good

5 AYES, 1 ABSENT, motion carried

Mount Jackson
Town Council Regular Meeting

February 8, 2022

-8-

2. Public Hearing on OFW Solar Farm Siting Agreement

Mr. Showalter stated deferring the two cases above obviates the need to consider the siting agreement at this time, and it would be appropriate to defer the public hearing on the siting agreement until March's meeting so it can be held if action is taken, and deferred if not.

Councilmember Andrick MOVED, seconded by Councilmember Good to DEFER the Public Hearing on OFW Solar Farm Siting Agreement - Reset for March 8, 2022 at 7:00 PM.

ROLL CALL VOTE:

AYE

NAY

ABSTAIN

ABSENT

Councilmember Fultz

Councilmember Miller

Councilmember Andrick

Councilmember Shepherd

Councilmember Rudy

Councilmember Good

5 AYES, 1 ABSENT, motion carried

New Business:

1. Review and Adoption of Financial Report – Year Ended June 30, 2021.

Mr. Shepherd stated the Town received its audit from Robison, Cox and Farmer and he was pleased. Mario Rosso has prepared three audits for the Town, and he received lots of acclamation and praise from the accounting firm. Mr. Shepherd stated everything was in good order except for two minor issues. Staff had been unsure where to put the ARPA money received as part of the COVID recovery program, and the budget decision for June 2020 not to increase water and sewer rates essentially did not affect those funds too much. Mr. Shepherd stated Page 75 of the audit shows the revenue for the Town's general fund and the local sales and use taxes brought in \$178,000. There is current discussion in the General Assembly regarding repealing food tax which would ultimately impact that number, but hopefully the General Assembly would give municipalities across the state another way to replace that revenue.

Councilmember Shepherd MOVED, seconded by Councilmember Andrick to APPROVE the Adoption of Financial Report for the Year Ended June 30, 2021.

ROLL CALL VOTE:

AYE

NAY

ABSTAIN

ABSENT

Councilmember Fultz

Councilmember Miller

Councilmember Andrick

Councilmember Shepherd

Councilmember Rudy

Councilmember Good

5 AYES, 1 ABSENT, motion carried

Motion made by Councilmember Shepherd to adjourn the meeting at 8:33 PM.