

Mount Jackson
Town Council Regular Meeting
November 9, 2021

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The regular meeting of the Mount Jackson Town Council was held November 9, 2021 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, Judy Fultz, and Roger Rudy in attendance. Councilmember Dennis Andrick was absent.

Also, in attendance, Neil Showalter, Town Manager; Jeff Sterner, Police Chief; Jay Neal, Town Attorney; and Debbie Allen, Town Clerk. Visitors were Tommy Keeler with Northern Virginia Daily; Keith Cowart; Robert and Eleanor Whitehurst; Melinda Monroe; Karen Costie; Candi LoPresti; Dominika Sink, Yarden Golan, Eliana Ginis, and Elad Goldberg from Energix; Sean Millot from Kimley Horn; and Scott Foster from Gentry Locke. Darla Odom, the Town's zoning consultant from The Berkley Group, attended electronically through Zoom.

Dave Moore from Cornerstone was present to provide Zoom service.

Agenda Additions/Deletions/Changes: None

Hear from Visitors:

1. Karen Costie spoke on behalf of the Mount Jackson Hometown Partnership regarding the Fall Festival on October 30. She stated it was a little soggy, but turned out well with good attendance. She stated the Partnership appreciates the Town's financial support and providing the services of Preston and Eli from Public Works, Sergeant Cowart and Officer Young. Ms. Costie stated the Partnership has scheduled an impromptu Veterans Day event on November 11 at 5 PM at the Veterans Memorial. The band from Mountain View High School will be playing, participation from Boy Scouts, and local clergy will be there as well. Ms. Costie stated the Partnership sent out emails to those who bought Veterans Banners inviting them to attend, and Mayor Pifer will be dedicating the banners.

2. Candi LoPresti stated she had three things to discuss. First, she hopes Mr. Showalter will address the status of the sidewalks near Avondale Acres during his Town Manager report. Secondly, Mount Jackson received American Rescue Plan Act (ARPA) funds of 2.1 million and asked Mr. Showalter if a wish list of support to non-profits had been presented to Council yet. Mr. Showalter stated staff has not completed the list, and he has placed the Town Treasurer on notice to gather information about whether or not expenditures like those are ARPA eligible. He called on Ms. LoPresti and her organization to research that as well, as this is a fairly new program and a list of frequently asked questions is released regularly. Mr. Showalter stated the Council would want to know with some certainty if the things on the wish list are ARPA eligible. Ms. LoPresti stated her third item is regarding the ShenGo bus. She stated Mount Jackson does not support the bus system stopping in Mount Jackson, but it can stop in Town if flagged down, and also there is a number that can be called to request a pick up. Ms. LoPresti suggested the Town attach to the water bill monthly information informing residents they do have that opportunity. She stated the October ridership number was 454. Mr. Showalter stated he has the ridership information as well, which is broken down between the north and south routes.

Remarks & Recommendations from the Mayor: Mayor Pifer stated the Hometown Partnership did an excellent job organizing and hosting the Apple Harvest Festival.

Remarks from Councilmembers: None

Presentations: None

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Chief of Police Report: Chief Sterner gave an update on the covered bridge, which has been struck twice in recent times. Sergeant Cowart recently followed a tractor trailer with his blue lights on attempting to stop the driver on Wissler Road, but the tractor trailer went straight into the bridge. The metal chains did nothing to deter the driver. Chief Sterner stated per Ed Carter from VDOT they have revised their timeframe on closing the bridge from 120 days to up to 120 days, to review their options. He let Mr. Carter know the road is now closed, and made a suggestion that possibly that road can be removed from GPS. Mr. Carter agreed, but that has to be done on a state level and could take time. Chief Sterner stated they also discussed additional signage, and unfortunately one option is to permanently close the bridge.

Town Manager Report: Mr. Showalter gave an update on the north end sidewalks. He stated in the course of VDOT's review, they asked the Town for information regarding any public hearings related to the sidewalks. They also wanted a letter of assurance that should the Town accept a bid where it might be asked to pay more than 20%, that it is willing to do so. Staff came to an agreement with VDOT on the wording, and Karl Schaeffer approved it as well. VDOT is also asking whether any of the Town staff has had T-21 project administration training. Mr. Showalter stated he did not have an opportunity to review staff records, but volunteered himself for that training, which is offered by VDOT. Mr. Schaeffer stated it did not have to be done before the job went to bid, but would have to be finished before the project started. Mr. Showalter stated there has been a series of review points including equal opportunity and civil rights reviews, and the Town is waiting for permission to bid. Mayor Pifer asked if he knew what his job responsibilities would be as project administrator. Mr. Showalter stated it is possibly paperwork related, which he has experience doing on another project.

Committee Reports:

1. Finance Committee Chairperson, Rod Shepherd stated he anticipates the audit report will be in the packet to review at the December council meeting.
2. Ordinance Committee Chairperson, Dennis Andrick was absent.
3. Personnel Committee Chairperson, Roger Rudy stated the committee met on October 12, October 29, and November 5, covering three areas; 1) the upcoming Chief of Police vacancy, 2) the Planning and Development Administrator vacancy, and 3) the Town policy addressing vaccination and masking. The committee reviewed and updated several Police Chief position documents that were on file, such as the announcement, position description, application, and interview questions. Mr. Rudy stated the committee also identified the interview team and addressed the importance of appointing an interim Chief. The committee had assistance on all of these tasks from Judy Fultz of the Public Safety Committee, Mr. Showalter, Chief Sterner, and Mayor Pifer. The Town Attorney also assisted in helping to identify some possible candidates for the interim Chief. The committee expects to convene a council meeting sometime between now and the end of November to appoint an interim Chief. Mr. Rudy stated the Town Manager also gave an update on responses to the Planning and Development Administrator position, and the committee worked with the Town Manager and Mayor on the Town's vaccination and masking policy. The committee's next meeting is scheduled for November 17 at 3:30 PM.
4. Public Safety Committee Chairperson, Judy Fultz reported October Police Department calls were 1020, up 147 from September. There were 7 criminal offenses, 3 cleared by arrest, 3 under investigation, and 1 closed unfounded. They conducted 780 extra patrols/property checks, and 48 foot patrols locating 6 open doors/windows at 4 different locations.

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5. Public Services Committee Chairperson, Bonnie Good stated last month there was a meeting held to discuss replacing the Town's water meters to a more efficient, Wi-Fi identify type. This would be a drive-by procedure, and take a lot fewer man hours for them to be read. Ms. Good stated many of the Town's water meters are old and ineffective, and unable to provide an accurate reading. This project has been in discussions for a while, and there are many things to identify and bases to cover before making a decision.

6. Public Properties & Facilities Committee Chairperson, Whitney Miller had no report.

Consent Agenda: Approval – Minutes of October 12, 2021 Regular Meeting.

Councilmember Good MOVED, seconded by Councilmember Fultz 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. Consideration of Town Policies Pertaining to Staff Protection from COVID-19, Carried Over From October Meeting.

Mr. Showalter stated at the last meeting the Council attempted to tackle the tough issue of a vaccine mandate, the type of testing for those who choose not to vaccinate, and a masking policy the Town might wish to adopt for its employees and Town office visitors. Since then, OSHA has come out with some regulations and Virginia OSHA has 30 days to develop those standards. In a meeting with the Personnel Committee it was agreed to wait until Virginia OSHA has developed the standards by which most of the working world would be expected to follow, before adopting vaccine and testing requirements. Mr. Showalter stated meanwhile the Town could be clear on is a masking policy that is simple and direct. The masking policy recommendation is as follows: "Where six-foot distancing cannot be maintained, inside or outside, a mask shall be worn. This requirement is applicable to all Town Staff, Council Members, Planning Commissioners and Visitors to the Town Hall". Mr. Rudy asked if this policy is to be in place during the interim period until the final Virginia OSHA standards are set, and Mr. Showalter stated yes, this policy would be in place until it is changed.

Councilmember Fultz MOVED, seconded by Councilmember Rudy to APPROVE the Town Masking Policy.

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			

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Mayor Pifer asked Mr. Neal if he had a Town Attorney Report. Mr. Neal stated nothing new other than in the Virginia Fifth Circuit, there is consensus among many legal representatives that the President does not have the power to mandate COVID regulations. A workaround is being discussed going through OSHA to make it a work regulation as opposed to a mandate from the executive branch. Mr. Neal stated among some of TV talking heads of the opinion he respects, they feel the President does have that power. Mr. Neal stated it will more than likely end up in U.S. Supreme Court on the fast track.

New Business:

1. Introduction of Special Use Permit Application SUP 21-01 and the Related Solar Facility Siting Agreement – OFW Solar Farm.

Dominika Sink introduced herself as the project development manager with Energix, the company that built Mount Jackson Solar. Energix is headquartered in Arlington, Virginia, has seven operational projects in the Commonwealth, and two more under construction. Energix has its own construction company and performs the operation and maintenance on all projects. What differentiates Energix from other companies in the industry is they are the long term owner of the projects, not selling them to utility companies. Ms. Sink stated Energix is also committed to buying American-made equipment, partnering with First Solar, the module manufacturer. Energix works with communities hand-in-hand to create dialogue, and to make sure they are a harmonious neighbor.

Ms. Sink stated they are proposing OFW Solar to be located off Turkey Knob Road on Whitehurst property, near the existing Mount Jackson Solar. To the south is previously permitted Phases II and III, with OFW Solar being a new addition, Phase IV. It is uniquely located as one neighbor is I-81; the southern border is the railroad tracks; an industrial neighbor, Mason Cabinetry; and two residential neighbors, Ms. Melinda Monroe and Mr. Robert Whitehurst, both present tonight. This proposed phase will be approximately 20 megawatts located on 128 acres. Phases II and III were already permitted, but adding OFW Solar Phase IV will provide more revenue to the Town of Mount Jackson over the 35 year lease, of approximately 2.4 million dollars. In addition, Energix will try to source labor locally, using local businesses for supplies and staying in local hotels which will boost the local economy.

Ms. Sink stated they are proposing 50 foot setbacks from properties and roads which would be uniform with the already-built project, and the two pre-approved phases. They are proposing maintaining existing vegetation on the property lines near the roads and using existing topography to screen the project. In line with the ordinance, they will plant 10% pollinators, protecting any wetlands or natural resources. The view from I-81 shows berms and existing vegetation within the 50 foot setback to serve as screening. There is an overlook bridge which is the only part the project that will be visible from I-81. The south eastern property line has a railroad, existing vegetation, an industrial facility, and a tree line on a boundary that abuts to Mr. Day's property to provide screening. There is an existing tree line on Ms. Monroe's property, and Energix will continue conversations to make sure that she is comfortable with the project and there are no impacts to her property.

Ms. Sink stated solar is a low-impact development that does not generate pollution or noise, with very little traffic after construction, and the project will not place any strain on county or town provided services. They are proposing 35 years of operation, and will decommission the project at the end of the useful lifetime. They will remove all above and below ground equipment and reseed the project area with native grasses. To provide additional assurance Energix will provide a surety bond to ensure the property will be properly

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decommissioned. Currently they are in the local zoning stage, however should they get the zoning permit, will go through the required Virginia state level permitting. That entails performing wetland delineation, obtaining the preliminary jurisdiction determination from Army Corp of Engineers, carrying out any threat to endangered species surveys, cultural, architectural and historic surveys. In that process all findings are reported to DEQ, who then consults their sister agencies to make sure there are no impacts to their resources. After a permit is issued Energix would start work on the land disturbance permit. They will have stormwater management and erosion control plans to make sure there is no run off from the site, and put in retention ponds and silk fences to make sure there is no excess storm water. They will provide temporary measures such as seeding, mulching or hay to stabilize the soil during construction. They have their own construction arm and will be on site to oversee the activities throughout construction to make sure these measures are maintained properly.

Ms. Sink stated Energix partners with First Solar using American-made equipment, which is designed to the highest safety and quality standards. The company has done a lot of third party reviews and research, from Virginia Tech and MIT, to examine the safety of this technology. This technology has been embraced across the world, with half of the utility scale solar installations in the U.S. today using it. One reason Energix partners with First Solar is they provide an option to participate in their recycling program, a great way to reuse the components in the panels, and to ensure they are disposed of in an appropriate manner. The technology is thin film, using Cadmium Telluride (CdTe), which is very different from Cadmium (such as air and water). CdTe is not soluble in water, a very stable component and has been tested in a wide range of conditions from hail, temperature, fire, and consistently all reports show no hazards to the environment or human health.

Ms. Sink stated in regards to the fiscal and economic benefits, there is new legislation that allows the Town to participate in Revenue Share, instead of opting into the M&T Revenue taxing protocol. Under Phases II and III, consisting of approximately 320 acres, the Town revenue would be \$987,000 over 35 years. By adding 129 acres from OFW Solar the Town revenue would be approximately 1.4 million dollars, totaling 2.4 million dollars for all three phases. The County revenue is more because their tax rate is significantly higher, so 4.8 million dollars for Phases II and III and 1.7 million dollars for OFW Solar, totaling approximately 6.6 million dollars over 35 years. Under the M&T tax protocol OFW Solar revenue would be \$300,000 and with Revenue Share would be 1.4 million dollars. These numbers exclude any increase from the reassessment for real estate values. M&T calculations rely on the capital expenditures, depreciation rates, and tax rates, so it is a number that is fairly volatile until construction is reached and all numbers are locked in. Revenue Share is a simplified flat payment and the state proposed the locality may assess up to \$1400 per megawatt AC. For this project that would be approximately \$28,000 just for the Revenue Share, and every five years there is a 10% escalator to make sure that payment keeps up with inflation.

Darla Odom stated there are two land use actions that would be required for this proposed development. The first is a substantial accord determination, listed on the staff report as SA 21-01. Prior to locating a public utility facility whether it is publically or privately owned, Virginia code 15.2-2232 requires an affirmative determination by the Planning Commission that the general or approximate location, character and extent of such facility is substantially in accord with the Town's adopted comprehensive plan. The Council, after the Planning Commission makes its determination, would then affirm or overrule it. The second part of this development proposal would be the special use permit, SUP 21-01, and Energix has submitted an application, which is required by the zoning ordinance in the agricultural district to locate the utility scale solar facility on the subject property.

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Ms. Odom stated staff has been working with the applicants since April or before, to finalize the application last revised October 25, and feels it is complete in meeting the application requirements. The applicant has included ordinance requirements, such as a traffic plan, landscaping plan, decommissioning plan, and a conceptual development plan. The applicant is asking for exceptions to the current standards, to be similar to the conditions on the adjacent Mount Jackson Solar, and pre-approved Phases II and III. The zoning ordinance was amended in 2020, requiring the approval of a special use permit for a utility scale solar facility in this district, and now has very specific requirements. The current ordinance states if solar facilities are within a mile of each other the total acreage should not exceed 400 acres. The approved solar facility acreage for Mount Jackson Solar and Phases II and III totals 526.9 acres, and the applicants are seeking this special use permit on 128.6 acres, bringing the total to 655.5 acres. The applicant is also requesting exceptions to setbacks, buffer width, screening, landscaping slopes and grading. Relative to the wildlife corridor, the applicant is proposing to have corridors through their setbacks but no corridors for wildlife. They are also asking to extend the time from the SUP approval to commencing construction and beginning operation from two years to five years. The applicant is proposing a 50 foot setback maintaining the existing vegetation with a potential for supplemental landscaping adjacent to certain properties provided the property owner agrees. Ms. Odom stated additional findings will be provided by staff at the public hearing including an analysis of the comprehensive plan for the substantial accord determination, analysis of the special use permit request, and recommending conditions to impose should the Council determine after public input that approval of the request is appropriate.

Ms. Odom stated the Planning Commission at their meeting last week set a public hearing for both of these items on December 6. The Council can also schedule their public hearing on these two items at the same time as a joint public hearing, or may have a separate public hearing. Ms. Odom stated Council would need to have a public hearing for SUP 21-01, and one for the solar facility siting agreement between the Town and the applicant, which is in accordance with state code 15.2-2316B. Those hearings are not required to be at the same meeting but can be, taking consideration for the special use permit first, and siting agreement after that. Ms. Odom stated the siting agreement is the land use consideration, i.e., is the land use appropriate for this property. Mr. Showalter asked if the Council would want to join the Planning Commission public hearing on December 6 or have its own on December 14. Mr. Shepherd asked if the Planning Commission is involved in the siting agreement, and Mr. Showalter stated no, it is an agreement between the applicant and the Council only.

Mr. Whitehurst asked if all public hearings can be combined into one meeting so the Commission and Council will hear the same things, instead of delaying it another month. Mr. Neal stated one reason would be to not throw too much at people at once. Mr. Neal stated one factor of the siting agreement is if the project has aspects that may potentially cause harm, the Town can make sure those things are mitigated in this contract. For example, if there is a waterway through the project and the Town wanted special protection, it can be put into the siting agreement the developers will take steps to make sure that water stays pristine, unpolluted, and protected, for example. Cash proffers are another issue, where money can be offered, and the siting agreement between the Town and developer can negotiate those things.

Ms. Odom stated staff has been discussing the public hearings, and the substantial accord determination and the special use permit do involve the Planning Commission, but the siting agreement does not. Therefore staff suggests a joint public hearing on the land use matters, the SA and SUP, but have a separate public hearing on the siting agreement.

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Councilmember Shepherd MOVED, seconded by Councilmember Good to APPROVE a Joint Public Hearing with the Planning Commission on December 6 at 7:00 PM, to Make a Determination on the Substantial Accord (SA 21-01) and the Special Use Permit (SUP 21-01).

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

Councilmember Shepherd MOVED, seconded by Councilmember Fultz to APPROVE a Public Hearing Prior to the Regular Council Meeting on December 14 at 7:00 PM, to Make a Determination on the Siting Agreement.

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

Attorney Scott Foster stated he is with Gentry Locke (Richmond office), who has solar land use applications in over 70 jurisdictions in Virginia. The leader of his practice group drafted the siting agreement legislation, which resulted due to solar developers entering into voluntary payment agreements with jurisdictions to house additional money above and beyond project statutory tax obligations to provide an economic benefit to the project. Neither the development community nor the solar community were completely comfortable with that because it was a private contract and there were questions as to enforceability. The siting agreement legislation was proposed to solve that problem and is based on some previous legislation that applied to landfill siting agreements, where one could enter into a confidential negotiation on the business terms that surround a solar development that essentially wrap around, in this case, the special use permit.

Mr. Foster stated it is a really nice vehicle for frank conversations about project financials between the development community and local governments, and a nice way for local governments to house solar revenue. One feature of the siting agreement is revenue can be bonded when routed through it, in essence acting like a financing instrument. Another factor of the siting agreement is in the event the Planning Commission were to not find the project to be in substantial accord with the comprehensive plan, and the Council ultimately approves the siting agreement, execution of the siting agreement pursuant to state code automatically deems the project in substantial accord with the comprehensive plan. He stated the special use permit hearing is first and the siting agreement second. The use permit becomes an exhibit to the siting agreement, helping from an enforceability perspective because it ties in all the commitments made during the use permit process and binds an extra layer of agreement above and beyond the traditional use permit process. Mr. Foster stated he has never been a part of a public hearing process where the two matters were considered on separate nights, typically because they are all part of the same breath.

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Mr. Foster stated the last final important part is the siting agreement allows a variance from the Town ordinance as it relates to a specific project. That benefits not only the developer but also the Town because localities are not hit with zoning text amendments, and can make exceptions to specific projects. Mr. Foster stated solar revenue share is a local option ordinance and in the event Council opts in, would be waiving solar machinery and tools tax. Typically solar revenue share produces significantly more revenue than solar machinery and tools, because machinery and tools are subject to certain state exemptions and a rapid depreciation schedule. Ms. Sink stated the way the site agreement is drafted, if Council decides not to adopt a revenue share, Energix will still opt into whichever revenue would be greater. She stated they are happy to participate in any protocol that provides better revenues to the Town. Councilmember Good stated regarding the siting agreement, it states "up to" \$1400 per megawatt, which leaves a lot of flexibility. Mr. Foster stated that means in theory a local government could adopt a revenue share ordinance that was less than \$1400 per megawatt if desired.

Ms. Odom stated regarding past joint public hearings for zoning matters, the Planning Commission and Town Council have opened their meetings, had the public hearing, the Council adjourns, and the Commission has a discussion and makes a recommendation. Another option is the Commission could adjourn, the Council reopen its meeting and have a public hearing on the siting agreement, then take action or not. The Commission may make a recommendation to Council on December 6, or they could defer that action, because they have 100 days for consideration. Council would then be having a public hearing for the siting agreement ahead of the SUP. Ms. Odom stated instead of having the public hearing on the siting agreement prior to the Council meeting on December 14, she recommends starting the Council meeting, get the recommendation on the substantial accord and special use permit if the Planning Commission has taken action, then Council could have the public hearing on the siting agreement.

Councilmember Shepherd stated Council has never had a public hearing at the end of a meeting before but with that description it makes perfect sense. Council would address the accord determination and special use permit during the meeting, then have the public hearing under New Business to address the siting agreement. Mr. Shepherd stated the siting agreement has a lot of moving parts and deserves a special look and allows staff and counsel an extra six days to negotiate. Mr. Neal stated fortunately the parts have been moving for a while and much has been done already.

Councilmember Shepherd AMENDED his prior motion, seconded by Councilmember Fultz to APPROVE a Public Hearing as the Last Item Under New Business at the Regular Council Meeting on December 14 at 7:00 PM to Make a Determination on the Siting Agreement.

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

Motion made by Councilmember Shepherd seconded by Councilmember Fultz to adjourn the meeting at 8:21 PM.