

Mount Jackson  
Planning Commission Meeting

December 6, 2021

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Regular Meeting

Chairman Larry Ambrose called the meeting to order at 7:00 PM in the council chamber at 5901 Main Street. Roll call was taken with Commissioners Anita Miller, Evelyn Burner, and Jim Hines in attendance. Commissioner Dennis Andrick was absent.

Mayor Donnie Pifer called the Council meeting to order at 7:01 PM with Councilmembers Roger Rudy, Rod Shepherd, Judy Fultz, and Bonnie Good in attendance. Councilmembers Dennis Andrick and Whitney Miller were absent.

Also present Neil Showalter, Town Manager; Jay Neal, Town Attorney; Steve Crisman, Interim Police Chief; Keith Cowart, Police Sergeant; Darla Orr, Zoning Consultant from The Berkley Group; and Debbie Allen, Town Clerk. Dave Moore from Cornerstone Technology was present to provide YouTube service.

Visitors were Tommy Keeler from NVD; Robert and Eleanor Whitehurst; Ros Poplar; Darrin Saylor; Jeanne Trabulsi; Randy Doyle; Jeff Cook; Dominika Sink, and Yarden Golan from Energix; Sean Millot from Kimley Horn; and Scott Foster from Gentry Locke. There were approximately 10 other visitors from the community present.

Joint Public Hearing

1. Substantial Accord Determination – SA 21-01 – OFW Solar
2. Special Use Permit – SUP 21-01 – OFW Solar

Mr. Showalter welcomed everyone present, noting it is good to have participation in local government. He stated the Planning Commission and Town Council wish to hear from the public their thoughts on the applicants' Special Use Permit and Substantial Accord applications, which will be heard at the same time because the issues are intertwined. Once the Chairman has adjourned the public hearing the time for public comment will end. The Planning Commission will then hold its regular monthly meeting where both SA 21-01 and SUP 21-01 approval recommendations will be business items on the agenda. At that time the Commission can recommend, not recommend, or table these items. Mr. Showalter asked everyone be respectful of each others opinions at all times and he thanked the Commission and Council for offering to serve the Town and make available their collective wisdom and experience. Mr. Showalter then asked Darla Odom of The Berkley Group to present the staff report.

Ms. Odom stated the applicants, OFW Solar Farm, LLC, are proposing to construct and operate a public utility scale solar facility on the subject property. In regards to the joint public hearing process, she will make a presentation on behalf of staff for the Town, the Clerk will read public comments received by email, the applicants will present their case information, and then the floor will be opened for public comments. After public comment the Council will adjourn and the Commission will have a discussion and take action on the case. In regards to SA 21-01, Virginia code requires affirmative determination by the Planning Commission that the proposed project meets the character, location, and extent of the Town's comprehensive plan. In regards to SUP 21-01, the zoning ordinance requires approval of a special use permit for a utility scale solar facility in an agricultural district.

Ms. Odom stated the subject property is 128.6 acres, bordered by Turkey Knob Road on the west, Walker Road on the south, a portion of I-81, and a railroad right-of-way. A map was displayed showing the current subject property, and the adjacent property of 526.9 acres that was zoned in 2018 for a large scale solar

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facility. This property is identified as being appropriate for industrial use, to promote economic development while ensuring the development is compatible with the character and history of the Town. Ms. Odom stated the comprehensive plan speaks to the protection of the Town's natural beauty, environmental responsibility, the importance of landscaping and tree retention as major contributors to quality of life, beauty and structure of the community's landscapes. When the solar facility was approved in 2018 the current ordinance did not exist and was not adopted until June 2020. Therefore the original 526.9 acres did not have the same tests that the current application has. Obviously, there is consideration given for the fact that the subject property is adjacent to the 526 acres.

Ms. Odom stated the current zoning ordinance states if a combined solar facility acreage, existing, approved, and proposed, exceeds 400 acres, there should be a one mile separation between those facilities. In analyzing the existing zoning, it was found those cases were approved with conditions that would allow landscaping to screen the facility, and setbacks from the property boundaries based on the discretion of adjacent property owners. Ms. Odom stated originally staff talked to the applicants about the solar facility being considered one whole project, and discussed what might be appropriate if those older conditions were brought in to apply to the entire solar farm. However the applicants felt they were too far down the road, working with neighbors and conditions to finalize Phase I. Therefore, there will be no more discussions about Solar I, II and III, as those have conditions already in place and being developed separately. The subject before the Commission and Council tonight is the 128 acres for OFW Solar.

Ms. Odom displayed a picture overlooking the Phase I property, stating there will eventually be an agreement to what type of screening will be provided there, as the conditions of that case were left open. The next slide showed the proposal for the current application, and regarding separating facilities by one mile, staff has agreed to an exception for that. Staff also agreed to the height exception, the wildlife corridor exception, and a slope exception. Ms. Odom stated the applicant is proposing to build the facilities on steeper slopes than the ordinance requires, which allows less land disturbance and grading. Staff determined the conditions of the 2018 cases will be worked out with the property owners, however in this case the conditions should be written in a way that is clear to everyone. The applicants proposed a 50 foot setback unless waived by the property owner, and are not going to provide landscaping within those setbacks unless desired by two of the adjacent property owners, specifically Ms. Monroe.

Ms. Odom stated the applicants want to maintain a 50 foot setback from all property boundaries, but will provide an evergreen landscape with a maximum height of 8-15 feet along the 7-foot high fence. Staff understands from the property owner that in the original zoning case, many adjacent property owners expressed they did not want vegetation screening because it would obstruct mountain views. Staff is working on a condition that if the Planning Commission is ready to take action, the Council will have the exact language before their next meeting. She stated there will be a 50 foot setback from all property lines, and Ms. Monroe, Mr. Whitehurst, and Mr. Day do not want any additional landscaping. Ms. Odom stated there are certain areas the property will be very visible from I-81, and others where it will not be. The applicants do not want to provide any additional screening along I-81 because there are some natural earth forms that already provide screening. Ms. Odom stated a solar facility should have an appropriate perimeter around it, so potential long term impacts on adjacent properties are minimized. So while the Town normally would not be support of a reduced setback, with the applicants willing to provide additional landscaping staff believes it is appropriate to approve it. The applicants also asked the Town notify them once the construction commences for rails-to-trails, and they would do landscaping at that time planting seedlings to grow while the project is under construction.

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Ms. Odom stated staff does recommend approval of the case SA 21-01, as required by Virginia code 15.2-2233 for any public facility to be found to be in substantial accord with the Town's comprehensive plan. The plan promotes environmental responsibility, which it does as renewable energy, and the facility satisfies the location criteria. There are a number of other conditions in the staff report that address other aspects of this facility, but she concentrated on the setback and screening issues because they seem to be the ones that rose to the top. Ms. Odom stated pages 8-14 of the staff report show conditions that are recommended by staff which would help to ensure the facility has a minimal impact on the surrounding area. There are also certain requirements that have triggers relative to when certain information will be submitted to the Town.

Ms. Odom stated there is a certain amount of information that is accompanies a zoning application, less all of the engineering work until the site plan process. So some conditions, like the traffic study, decommissioning plan, and landscaping, will come forward once they have a better engineered design of their site, to include all of the sureties and performances they will make under that plan. There have been no complaints about construction traffic with Phase I, which leads staff to believe there would not be issues in any other phases. The applicant stated prior to site plan process, the full traffic study will accompany it so when VDOT reviews it on behalf of the Town, if there are issues they will be identified. Staff also supports the approval of the special use permit SUP 21-01.

Comments from the Public

1. Ros Poplar stated he lives in Quicksburg approximately a half mile from the site and shares the same water table under the current site and the proposed expansion. He is a long term resident of Shenandoah County and spent 30 years in the U.S. Navy, ensuring upon retirement he would be able to enjoy the natural beauty of the valley. In his travels Shenandoah County is by far one of the most pristine areas in the world, with a perfect mix of agriculture, picturesque small towns and breathtaking views of two mountain ranges. Mr. Poplar stated regarding this planned expansion and existing solar farm, Mount Jackson's vision statement on page 4 of the comprehensive plan states "our Town of Mount Jackson seeks to preserve and enhance its natural beauty and cultural heritage and promote environmental responsibility". He asked how the expansion of a solar farm and prior approval for the existing one supports this vision. He stated he is amazed the authorization of Phase I was approved when it runs counter to the Town's comprehensive plan. Mr. Poplar stated in addition page 36 of the comprehensive plan stipulates vegetative barriers will be maintained around industrial areas. Phase I site has been in place for over a year and that has not been enforced. He stated responses to the comprehensive plan survey in 2017 indicate residents rank clean air and water among the Town's most desirable qualities and recognize protection of these environmental resources as among the most critical issues as the Town grows in the future. Expansion of a solar farm is in direct contradiction to what the Town residents say is the most desirable quality of life issue for them. Mr. Poplar stated he personally in the summer has extensive water runoff from the existing solar farm, into the Mill Creek, into the North Fork and Shenandoah River, which flows into the Chesapeake Bay. He stated in summary, this planned expansion goes against the very grain of the Town's comprehensive plan, and he does not see how members of the Planning Commission can approve this expansion. A vote to approve this project would be irreversible, and will forever be a stain on Mount Jackson and board members' personal legacies as well.

2. Darrin Saylor stated he is speaking on behalf of his fiancée Melissa Miller. The videos he presented show the runoff on Georgetown Road onto her property, which destroyed all the landscaping during the April rain. He stated he has been trying to get someone to take responsibility for this (the Town, County, and

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State) since April. He asked Commissioners what is going to be done about Ms. Miller's yard, as he has to landscape again this coming spring which costs money. Mr. Saylor stated he went down Turkey Knob Road one day during construction and watched deer go across the field and hit a fence, and one had to be put down. He implored Commissioners not to approve this, and asked for justice.

3. Jeanne Trabulsi stated she resides at 524 N. Royal Avenue, Front Royal, Virginia. She thanked Mr. Showalter for shepherding her through this process. She is a member of the Virginia Coalition for Human Rights which has over 10,000 Virginians who support the right of every person to live in a world with freedom on an Earth blessed with clean air and water. She stated she takes exception to the fact that in September, before the Planning Commission and Council, Robert Whitehurst slandered them as a hate group. She stated on behalf of the national and local chapters of Baptist, Methodist, Unitarians, Presbyterians, and New CC Churches, she asks for a public apology from Mr. Whitehurst to be included in the minutes of this meeting. Ms. Trabulsi stated regarding the issue at hand, if Mount Jackson Solar IV is permitted, Energix will use solar panels that contain a toxic heavy metal called Cadmium Telluride (CdTe). Her group is concerned that these metals could potentially leach into the soil and creeks, ground water, and wells, contaminating the blessings of the Earth. In an email that she sent the Planning Commission is information on the harmful effects of these panels. Ms. Trabulsi stated at least 5 counties in Virginia will not use these panels. Energix states they are safe because of reports they have paid for, reports they have commissioned. Prince George County prohibits them, and Madison, Spotsylvania and Louisa Counties require Energix to annually test the soil and water. She stated her group has reports from the Office of Safety and Health Administration (OSHA) that CdTe is very harmful, that if inhaled may cause cancer and damage to organs from prolonged or repeated exposure.

4. Randy Doyle stated he resides in Edinburg and works in Mount Jackson, and thanked the Commission and Council for the opportunity to express his views about the solar field. He was really struck by the comment "residents don't want their mountain views obstructed". This project is not about today but something for generations. He asked what would justify approval for this project. He stated the reason your staff member gave is "because this plan promotes environmental responsibility". Mr. Doyle asked if staff has looked at the environmental impact of mining, the heavy industrial action needed to produce concrete, steel, glass, the disposal of all the toxic batteries. Or if staff has compared all of the fallout to the environmental impact of power produced from natural gas. Mr. Doyle asked what is renewable about solar panels and batteries because they can not be processed again, and are toxic waste. Mr. Doyle concluded the purpose for doing this has no basis on environmental benefit, and he encourages everyone to research his comments to see they are correct.

5. Jeff Cook stated he resides in Edinburg, and fighting the solar farm there, as well as fighting for the beauty in the valley. He stated there is only so much space between these two mountains, and asked Commissioners and Councilmembers if they would want a solar farm beside their homes. He asked the staff representing the solar company to raise their hands, and asked if any of them lived in this valley. He congratulated them for being the gold standard for this area because people traveling here are saying they do not want to be like Mount Jackson. Mr. Cook stated solar companies are coming to the valley and buying cheap land, filling the valley up with solar panels, then leaving the area. He asked how much tax money this solar farm will generate for the Town, and how many people do they employ here. Mr. Neal stated this is a time for public comment only, and questions can be answered through a different route.

Chairman Ambrose stated Ms. Good will read several comments from the public received by email, and he has some phone call messages to pass along as well. Ms. Good read:

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1) Karen Costie who lives in Avondale Acres in Mount Jackson wrote "I want to voice my vehement opposition to any expansion of the solar farm. It is my opinion and the opinion of many that enough damage has been done to the land with the current acreage. I don't care who owns the land or how rich they are or what influential people they know-enough is enough. How would any of the Planning Commission or Town Council like to live near that travesty? When we drive down that road my husband and I turn our heads and look off to the East so that we don't have to see it. Who has gotten any good from this? I am very much in favor of industry coming to our area, but it should be something that offers jobs and pays taxes and employs people who become good citizens of our community. Obviously, this is not that."

2) Steve Baker, Chairman of the Shenandoah County Board of Supervisors wrote "Thank you for the opportunity to comment on the recent Special Use Permit Application 21-01 from OFW Solar Farm LLC. Citizen concerns that I am aware of from those outside Mount Jackson, residing in the County have focused on the visual and auditory impacts of solar facilities, stormwater management of the property developed for this use, and the long-term protection for citizens through decommissioning bonds. The county ordinance adopted in January 2021 addresses those issues. We hope through the Site Plan review process, the Town will also carefully consider these concerns. Please note the timing of this notice and your next meeting date did not allow the full Board of Supervisors to deliberate or to offer comment on this issue referenced above. However, as the District 2 representative and the Board Chairman, I felt compelled to share my thoughts on this project to ensure that there has been some commentary from the County. Please note that my observations are mine and do not represent the full County Board of Supervisors' official position."

3) Wanda Heidinger who lives in Avondale Acres in Mount Jackson wrote "To be brief and to the point, I'm strongly opposed to any further expansion of the solar farm. The existing solar farm is an eyesore. Our area is predominantly agricultural and as such attracts visitors as well as potential future citizens because of the beauty of our area. The existing solar farm already has a detrimental impact on this beauty, and any expansion would further detract from this beauty. Any potential funds that the expansion proposes are not worth the loss of the beauty of our area, which makes our area so attractive. I also have a concern for the wildlife that lives in the area which use the land for grazing and habitat. They would be further negatively impacted. As to the existing solar farm it is my understanding that the promised jobs which would be provided to our area have not materialized. Neither has the existing site been improved by plantings and fence screening. The agreement previously reached needs to be enforced, not ignored."

Chairman Ambrose stated he also had callers with questions, one being, is the project bonded. Mr. Ambrose stated he had a state-certified erosion specialist look at the Solar I project, who asked his name be withheld, who stated there are issues with draining inside the fence. A few callers stated on Phase I there were supposed to be trees planted, and the erosion problems taken care of. Mr. Whitehurst stated the site is still under construction, and the reason trees were not planted on Georgetown Road yet is they have planted grass and millet to get rid of weeds first. Mr. Whitehurst stated a few neighbors have expressed they do not want trees, so they have put together a survey with four different options to send to all neighbors to choose from. Chairman Ambrose stated the person he spoke with asked if anyone has contacted the local Shenandoah County extension agent regarding erosion issues. Mr. Saylor stated he contacted Jason Smith who looked at the land, but never got back to him. Mr. Ambrose stated maybe a second opinion is needed.

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Ms. Sink stated there is ongoing construction and they had their engineer walk the site and are working with their civil contractor to manage these issues. Mr. Showalter stated he received a draft letter to go out under his signature, explaining to the adjacent landowners what options were available to them for screening and buffering on the area between the fence and the edge of the property. He stated it seems those options are either tall trees or grass and he wanted some more in between selections, as people do not want to see the fence but do want to see the mountain. Ms. Sink stated Energix has been speaking with Ms. Odom as well about evergreen shrubs that grow 10-15 feet with different varieties to choose from. These would be planted for Mount Jackson Solar I once construction is finished in the spring, and would be planted for the new proposed project.

Ms. Sink stated she has a presentation which the Commission and Council have seen but the public has not, and welcomes any comments that may arise during this presentation. Energix is headquartered in Arlington, Virginia, a subsidiary of an Israeli-based company. Energix is the leading solar developer in Virginia and have 7 operational projects, 2 more under construction. What is unique about Energix is they not only develop, but own the project long term. They have their own construction arm, and oversee the projects from the duration of the life of the asset. Ms. Sink stated Energix partners with First Solar, an American module manufacturer, committed to buying American made equipment. OFW Solar will be in addition to Phases II and III, and its own project, which is adjacent to Mount Jackson Solar. The capacity of the project is approximately 20 megawatts AC, located on 128 acres which is in addition to the previously permitted 350 acres. Thanks to new tax legislation all phases will generate approximately \$2.4 million over 35 years. She stated they are proposing 50 foot setbacks, which is primarily driven by the specific location for this project of an industrial facility and railroad, the interstate, and the existing solar farm. Ms. Sink stated the current adjacent neighboring properties make it feasible to propose this as there are few residences. They have been in discussions with neighbor Melinda Monroe to make sure she is comfortable with the proposal. Within the setbacks they are maintaining the existing vegetation on all property lines and using existing topography along the highway to serve as buffering. Recently discussed, especially along Turkey Knob Road, is planting a vegetative buffer, and Energix is proposing to plant that buffer before starting construction so as not to arrive in a situation it is perceived the buffer is not there. Ms. Sink displayed a slide with a view from I-81, with berm vegetation in most areas, but some locations are not able to be screened. She stated they were not aware of the rails-to-trails project until recently, but are happy to provide in their conditions when that project commences, planting vegetation for proper screening. She stated solar in general is pollution free, does not create noise or traffic after construction, with no strain on infrastructure from the County or Town. Energix will provide surety for decommissioning, reseed with native grasses and return the property to the landowner at the end of the lifetime of the project. She clarified Energix is not purchasing the land, only leasing it, that Mr. Whitehurst owns it.

Ms. Sink stated in terms of stormwater management erosion and sediment control, it is taken very seriously. Mr. Showalter stated the inspector investigated the area outside the project and found no reason to act at that time, but reserves the right to return when the project is finished to review. Ms. Sink stated they do utilize measures like retention ponds to capture any excess stormwater and minimize exposed soils. There are also intermediate measures for stabilization, dust controls, and mulching to make sure during construction there is no runoff outside the project. Throughout construction their own point of contact is on site to make sure all measures are properly maintained. Regarding the technology, First Solar follows the American standards and their product is designed to the highest quality and safety standards. First Solar has been manufacturing these panels for 20 years, this technology has been embraced across the world, and there are more than 200 million panels deployed worldwide.

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Ms. Sink stated the decommissioning plan, which will be submitted for site plan approval, will present all the different options and uses for the equipment at the end of the project lifetime. After 35 years the panels are still producing power, just not to the commercial standard, so there is a big market for secondary purchase by residential customers. Another option is to recycle back to First Solar, a good way for them to lower the cost of procuring materials. Right now they have the ability to recycle over 90% of their products. There have been studies on CdTe from MIT, Columbia University, Virginia Tech that examined the safety of the technology. CdTe should not be confused with Cadmium, as it is not soluble in water, not toxic or carcinogenesis, but a stable component with the layer of one panel equaling 1/26<sup>th</sup> of a human hair. She stated because they are made in the U.S. they go through different tests in a range of conditions that far exceed what is in the natural environment. Ms. Sink stated Energix has not commissioned any reports or tests related to this technology. Ms. Sink stated in regards to fiscal and economic benefits, Phases II and III of approximately 320 acres are anticipated to generate \$987,000. Due to the change in the taxing protocols and revenue share, the additional 129 acres for OFW Solar will generate an additional \$1.4 million, totaling \$2.4 million. The county has different tax rates, and their revenue for Phases II and III will generate \$4.8 million, for OFW Solar will generate \$1.7 million, totaling \$6.6 million. Combining Town and County revenues would generate more than \$9 million over 35 years. Ms. Sink stated in comparing the old and new taxes, with M&T OFW Solar would generate \$300,000, but with revenue share it increases to \$1.4 million. She stated one of the main benefits of the siting agreement, is the ability for the locality to bond future expected revenues, so they can be used up front instead of waiting for them to materialize over the lifetime. Annual revenue shows the combined project will start at \$55,000 yearly, increasing every year for the duration of the project. Ms. Sink stated in addition to tax benefits Energix is also committed to bringing as much local labor as possible on the site, but these are temporary construction positions, not permanent jobs. They will include local contractors in bidding for construction and the maintenance scope of work and are happy to add that in the conditions. Any non-local staff will utilize local hospitality businesses, restaurants, gas stations, which all benefit the Town financially during construction.

Mr. Poplar stated that was a great presentation. In addition to being in the Navy for 30 years he was in the private sector for 10 years with Booz Allen Hamilton, and one of their specialties was buying and selling companies. He asked what assurance the Town has that Energix will be around in the next 5-30 years, and with a new company all things can change. Ms. Sink stated in terms of decommissioning Energix put that security in place to adhere to all the requirements, and the special use permit request is between the project and the Town. She stated it is not the intent, but should Energix be sold the terms of the contract stay the same, and their attorney has been working with the Town attorney to make sure the Town is protected. Mr. Poplar stated approving this project is irreversible, and asked Commissioners and Councilmembers take a hard look, because the environmental risks do not outweigh the benefits for the Town. He stated he is for sustainable energy and renewables but it needs to be done in a coordinated county-wide plan. The solar farm for Edinburg was tabled by Mark Dotson, because there is no plan, rather it is a hodgepodge of companies coming into the valley, desecrating the landscape, taking their money and leaving.

Mr. Cook asked how many employees not counting administration are out there working right now, and how much revenue has the Town received annually from the existing solar site Mr. Showalter stated this is a public hearing for comments only, not a debate, and there are routes to obtain information through the Town which he will be glad to respond to.

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Mr. Saylor stated citizens in Mount Jackson are simple people who love their Town, and asked who is going to get all the riches out of this project. He stated his yard is destroyed, and is the Town willing to let that happen. He stated he gets very passionate about this and nothing has been done to help him, and asked Commissioners to not make their decision based on greed.

Chairman Ambrose closed the Joint Public Hearing. Mayor Donnie Pifer called for adjournment of the Town Council; motion was made by Councilmember Good, seconded by Councilmember Fultz.

Agenda Additions/Deletions/Changes: None

Introduction of Guests: None

Hear from Visitors: None

Approval of the Previous Meeting Minutes – Commissioner Burner MOVED, seconded by Commissioner Miller to APPROVE the Minutes of November 3, 2021 Regular Meeting.

VOTE:

AYE

NAY

ABSTAIN

ABSENT

Commissioner Andrick

Commissioner Miller

Commissioner Burner

Commissioner Hines

Commissioner Ambrose

4 AYES, 1 ABSENT, motion carried

Old Business: None

New Business:

1. Substantial Accord Determination – SA 21-01 – OFW Solar - Eligible for Action.
2. Special Use Permit – SUP 21-01 – OFW Solar - Eligible for Action.

Ms. Odom stated the Planning Commission has had a public hearing on these two items, and now it is open for discussion, to ask questions, and an action needs to be taken tonight of recommending approval with conditions to the Council, recommending denial to the Council, or deferring consideration of this case until the next meeting. She stated the Commission has by state law 100 days from the date of the public hearing to take action on a zoning case.

Mr. Hines stated regarding the exception to wildlife corridor what are the qualifications for that, how much land does it require, and why is it in the ordinance. Ms. Odom stated the zoning ordinance establishes a wildlife corridor be provided through solar facilities, because animals get accustomed to their habitat. The applicant has asked for an exception to that requirement with this application. They are intending to allow the setbacks and natural vegetation areas provided outside of their fence, the 50 foot area along the edges of the property outside, to serve as the wildlife corridor, rather than having a crossing through the site. Mr. Hines asked if this is regarding Phase IV, or I, II, and III. Ms. Odom stated zoning is already approved on Phases I, II and III, and not up for discussion, the consideration tonight is whether to add 129 acres to that facility. Ms. Sink stated they are providing for wildlife movement outside the perimeter instead of through the project, as the other phases are not being fenced together, and OFW Solar is fenced separately from Phases II and III.



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Ms. Burner asked if the 10 feet vegetation will be planted on Turkey Knob Road, so the facility is not visible driving by, or is it just on Georgetown Road only. Ms. Odom stated it will be written in this case, that the applicant has agreed to do landscaping for this property along Turkey Knob Road within that 50 foot setback, such as two staggered rows of evergreen trees or shrubs. Ms. Burner asked if that will be the case for Phases I, II and III also. Ms. Odom stated she heard the applicant state they will offer that around Phase I as well (Georgetown Road and Walker Road).

Mr. Hines stated there is a wetland area near the railroad track on the site for OFW Solar, and will that be exempted from the fence. Mr. Whitehurst stated that swampy area is 2/10's of an acre, designated by the Army Corp of Engineers, so the fence has to be built around it. Mr. Whitehurst stated there is a culvert under the railroad and a pond on Merrillat's side and his side. Chairman Ambrose asked if this would increase any water flow onto Poole's property, and will there be a sediment pond built. Mr. Whitehurst stated his opinion is there would be less water because right now nothing is stopping it. Mr. Millot stated his company is the civil engineers representing Energix on the OFW project, and to be clear, did not do the engineering on the current project under construction. His company has been doing solar engineering the last 5 years within the Commonwealth. He stated regarding erosion control and stormwater, they will be designing ponds based on DEQ's requirements which are fairly strict for solar projects. Mr. Hines asked if the ponds will be identical to the ones there now because those are not functioning as well as they should. Mr. Millot stated there is a standard basis of design DEQ requires, a metal structure sticking out of it, netting, all common practices implemented in order to remove sediment from the water coming off the project. Each pond will be specifically designed based on the topography and drainage in that area. Mr. Millot stated they try to leverage as much of the natural topography as possible to limit grading, and place the ponds at the natural low spots.

Commissioner Burner MOVED, seconded by Commissioner Miller to DEFER Taking Action on SA 21-01 and SUP 21-01 Until Next Month's Meeting to Gather More Information.

VOTE:

AYE

NAY

ABSTAIN

ABSENT

Commissioner Andrick

Commissioner Miller

Commissioner Burner

Commissioner Hines

Commissioner Ambrose

4 AYES, 1 ABSENT, motion carried

Ms. Showalter asked if some guidance can be given to help staff and the applicant, on what additional information the Commission needs. Mr. Ambrose stated he would like to find out the plans for the drainage problems, get a second opinion on the erosion inside the fence, and what the decision is on the trees that will be planted in the buffer area. Chairman Ambrose stated he could not vote on the new phase until he knows people are happy with the first phase.

Mr. Showalter stated Mr. Neal has offered to give an explanation on how the decommissioning bond and plan works. Mr. Neal stated under state law there is a requirement that for solar farm decommissioning, initially there has to be an expert report indicating the cost to remove all panels and return the land back to its original state, and that cost has to be bonded. Typically this is done with a letter of credit from a bank which cannot be canceled or revoked. It then requires a review every 5 years of that amount to make sure it is still accurate and if the cost has gone up or down the bond amount has to change.

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He stated secondly in the siting agreement the Town asked for and the applicant agreed to insert language that if something is going to be sold the Town would get notified first to make contact with that company beforehand, and relay the conditions they are walking into. Mr. Foster added the last thing worth pointing out is this permit will run with the land, meaning it is binding on any successor assigned to the project. The Town is in the driver's seat if any provisions are not complied with in the future, which is good for the duration of the use. Mr. Hines asked if that includes bankruptcy as well. Mr. Neal stated the bond is separate from the bankruptcy, the bond is issued by the bank or large insurance company, so the company may go bankrupt but that letter of credit is still valid. Mr. Whitehurst stated if Energix would leave the panels it would be a great asset to him as it is worth millions of dollars in scrap metal, so they definitely will be removed and not left behind.

Board of Zoning Appeals Report: None

Town Council Items – Mr. Andrick: None

Zoning Administrator Report – Mr. Showalter stated he will provide this information at the 2021 Annual Report at the next meeting.

Board Members' Items: None

Commissioner Miller made a motion, seconded by Commissioner Burner, to adjourn the meeting at 8:56 PM.

Submitted by: Deborah L. Allen, Town Clerk