

Mount Jackson
Planning Commission Meeting
January 3, 2022
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Regular Meeting

Chairman Larry Ambrose called the meeting to order at 7:00 PM in the council chambers at 5901 Main Street. Commissioners Anita Miller, Jim Hines, Dennis Andrick, and Evelyn Burner were in attendance. Also present were Donnie Pifer, Mayor and Jay Neal, Town Attorney. Neil Showalter, Town Manager and Debbie Allen, Town Clerk were absent.

Visitors were Robert Whitehurst and Tommy Keeler from the Northern Virginia Daily. Dominika Sink and Yarden Golan from Energix; Sean Millot from Kimley Horn; and Darla Odom from The Berkley Group all attended electronically through Zoom. Dave Moore from Cornerstone Technology was present to provide Zoom and YouTube service.

Chairman Ambrose stated this is a regular meeting, not a public hearing, and if anyone wishes to speak tonight to please sign up.

Agenda Additions/Deletions/Changes: None

Introduction of Guests: None

Hear from Visitors: None

Presentations: None

Approval of the Previous Meeting Minutes – Commissioner Burner MOVED, seconded by Commissioner Miller to APPROVE the Minutes of December 6, 2021 Regular Meeting and Joint Public Hearing.

VOTE:

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Commissioner Andrick			
Commissioner Miller			
Commissioner Burner			
Commissioner Hines			
Commissioner Ambrose			
5 AYES, motion carried			

Old Business:

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

Ms. Odom stated the applicant proposes to construct and operate a utility scale solar facility on the subject property, and there are two cases pending on this proposal. Regarding Substantial Accord 21-01, Virginia Code 15.2-2232 requires an affirmative determination by the Planning Commission that the general or approximate location, character and extent of a public utility facility, whether publicly or privately owned, is substantially in accord with the Town's adopted comprehensive plan. Regarding companion case Special Use Permit 21-01, the zoning ordinance permits a utility scale solar facility with the approval of a special use permit in the agricultural A-1 district. The ordinance contains specific use standards for a utility scale solar facility, and with this request the applicant is seeking exceptions to those standards which will be discussed in more detail in this presentation. Ms. Odom stated following discussion at the joint public hearing on December 6, 2021, the Planning Commission deferred action on the cases to tonight's meeting.

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Ms. Odom stated the subject property is 128.6 acres, fronts the southeast line of Turkey Knob Road, the west line of Interstate 81, and the northwest line of the railroad right-of-way generally south of Walker Road. The adjacent property is 526.9 acres of solar facility use, being developed as Mount Jackson Solar I, OFW Solar II and III, and all were approved in the 2018 special use permit, prior to the June 2020 adoption of the Town's current zoning ordinance. Adding the current acreage from Phase IV would make the overall facilities 655.5 acres. The 2018 SUP approval had conditions that addressed some of the typical designs and operational standards such as construction activities, security fencing, facility deconstruction and maximum heights, however also included some atypical standards such as setbacks, buffers, landscaping, and screening. While Phase IV was not part of those zoning cases, the setback and buffer areas they are proposing in this case are similar to Phases I, II, and III.

Ms. Odom stated there has been discussion and public comment questioning "how do we know the applicant is going to do what they are supposed to, because they did not for Phase I". Mount Jackson Solar I received site plan approval and the site is still under construction. With this approval they were allowed to begin construction and there are certain things they are required to do prior to the issuance of a certificate of occupancy, such as planting vegetative screening, final site stabilization and submitting the decommissioning plan with surety.

Ms. Odom stated the plan allows for Meyer Spruce, Eastern Cedar or an approved equivalent tree to be planted within that landscape screen along Georgetown Road. Previously discussed was trees that would reach a mature height between 8-15 feet, but taller trees are no longer a concern for adjacent property owners. The applicant proposes for the Phase I site to plant 30-40 feet tall trees that would be Green Giant, Thulia, or Cryptomeria Radians, 15 feet on center and at a height of 4-5 feet at the time of planting, which have an annual growth rate of approximately 2 feet per year. The applicants plan to start planting mid-January and are working with contractors regarding site stabilization in areas that were diluted. Ms. Odom stated the use would not affect the health or safety of persons residing or working in the area, would not be detrimental to public welfare or unduly injurious to property values in the area, and would not conflict with the policies and principles of the comprehensive plan. The use and some of the requirements in maintaining the integrity of the intent of the zoning ordinance, come in the form of conditions that staff has made recommendations for in the staff report.

Ms. Odom stated the comprehensive plan notes the importance of protecting the Town's natural beauty, promoting environmental responsibility and considers landscaping and tree retention as major contributors to the quality of life, beauty, and structure of the community's landscape, improve air quality, reduce noise and glare, assist with control of soil erosion and increased storm water runoff, and enhance real estate values. The plan recognizes that setback areas are crucial in making space available for tree retention and landscaping. The plan also provides that creating greenways is a priority, such as the rails-to-trails efforts underway to convert the underutilized railroad right-of-way into a usable trail. This subject property abuts the railroad and it has been put in writing in the proposal to provide vegetation along the railroad right-of-way once the trail commences construction.

Ms. Odom referred to a slide outlining the zoning ordinance use standards for a utility scale solar facility, and the applicant's proposal which seeks exceptions to some of those use standards. The current ordinance sets a limit for solar facilities of 400 acres, and requires a one mile separation between facilities. The total area for the solar facilities in this case would be 655.5 acres. This site is adjacent to a site that was approved in 2018 so the applicants are seeking an exception to allow the increased acreage without the one mile separation.

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Ms. Odom stated the current ordinance requires setbacks from the property lines of 200 feet from dwellings, and 150 feet from all other properties. The applicants are proposing a 50 foot setback from all property lines, which is similar to what was approved in 2018 for the existing solar facilities prior to the ordinance change. The current ordinance requires a buffer width of 100 feet from property lines, and the applicants are proposing 40 foot from all property lines. Part of that suggestion is because if there is a 50 foot setback there needs to be some difference between the setback where the fence is located, and where they plant vegetation so that during construction the vegetation can be protected. The screening and landscaping ordinance requires sites be significantly screened from ground level views, security fencing should not be visible by other properties, and landscaping with evergreen and deciduous mixes as approved by the zoning administrator should be provided. Opaque architectural fencing is acceptable except for as a primary method of screening, but the applicants will use retention of existing vegetation where it exists instead. The prior proposal included an exception the applicant would provide additional planting if the adjacent property owner asks, but has been modified to state they will plant vegetation of a fast growing evergreen tree with a mature height of 30-40 feet tall planted 15 feet on center, along all of their property lines, except the topography along I-81 that already blocks the view of the facility. They are proposing rather than waiting until the site plan process as in Phase I, to plant seedlings 18 months prior to commencing construction with the growth rate of at least two feet per year. The applicants have also agreed that along the railroad right-of-way, once construction begins, they would go ahead and plant seedlings of the same tree there as well so as construction continues these trees would have the opportunity for growth. The applicants are looking for an exception to allow them to build on slopes of 15% or greater rather than 10% or greater as the ordinance requires, which would reduce the need for as much site grading. They also are seeking to allow their setbacks to serve as wildlife corridors, which would not be through corridors but around the fencing. A reason the applicant provided for this is their facility will not be fenced in as a whole, but this phase and each phase forward will be fenced separately. Finally, the applicants are seeking an exception to timing for them to begin construction or operation of the facility, from within two years of the approval of the special use permit, to within 5 years with the option of further extensions later if approved by the Town. Ms. Odom provided a slide of the current conceptual plan the applicants have in their application for Phase IV. There is a condition that prior to obtaining site plan approval, they would bring a conceptual plan back to the Town for consideration, showing it meets the minimum standards of the zoning ordinance and any conditions approved in this case.

Ms. Odom stated after consideration should the Planning Commission determine it is appropriate, staff recommends approval of Substantial Accord 21-01. While the comprehensive plan designates the property promote economic opportunities, consideration of the proposed facility as an expansion of the larger adjacent solar facility may be appropriate as conditioned with Special Use Permit 21-01 to mitigate the impact of the proposed facility on adjacent properties and the Town. Under such conditions, the proposal satisfies the criteria of the location, character and extent as specified in the Code of Virginia, and promotes environmental responsibility through a development that preserves clean air and water.

Ms. Odom stated if the Planning Commission determines it is appropriate to approve the special use permit, the approval should be subject to the recommended conditions on pages 12-19 of the staff report. These conditions address the project scope, liability, construction and operation security and fire safety site maintenance, addresses exceptions to the ordinance standards as outlined in the textural statement and would be in addition to any applicable federal state or local regulations. As conditioned the facility as a renewable energy source promotes environmental responsibility, and located in a manner which minimizes the impact of a use on surrounding properties and the Town.

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Mr. Ambrose asked if anyone could explain how sediment ponds actually work, as he has observed several in Rockingham and Shenandoah counties that are not full. He asked if maintenance on the ponds is part of the new proposal. Mr. Millot asked if the general question is whether or not there should be water in them, or are all the details needed on how they work. Mr. Ambrose stated recently there was a period of time with no rain in this area, and he noticed one was still half full, and one was completely empty, and asked if that is due to lack of maintenance on one. Mr. Millot stated the standard is after a rain event for the pond to be able to discharge back down to normal water level, which is about half full. In times of drought or a need to dewater the pond for maintenance the water level may be lower than normal. He stated occasionally the ponds leak with all the pipe connections at the metal riser structure, so there is a combination of things that may drain a pond, which does not indicate the pond is not in compliance. Mr. Millot stated he visited the site and did notice one had water approximately where it should be along the pond height, and the other one was completely dry. In looking at the riser structure he did not notice any major issues, so it could be that it was dewatered or there may be a small leak, both acceptable. Mr. Ambrose asked if someone would need to provide maintenance on the ponds in years to come. Ms. Sink stated Energix has contacted the local contractor to work with the sediment ponds and grass and vegetation inside the project to make sure that they can get the final approval from DEQ and the certificate of occupancy to transition from construction to operation.

Mr. Hines asked if there is a future plan to look at what is in the sediment ponds, such as a water test, and if that is required or something the Town could request. He also noticed there is no live vegetation around the ponds and wonders if the water contains anything the Town should be aware of. Mr. Millot stated he was not aware of a requirement for water testing. Ms. Odom stated there is a condition in the staff report that would require annual ground water monitoring, but not a requirement to test the sediment ponds by the applicant.

Ms. Miller asked if Phase IV has steep downhill grades that would cause water runoff. Mr. Whitehurst stated Phase IV has the least amount of hills, that he has worked those fields for years and there is not a lot of water issues. The Army Corp of Engineers did floodplain tests and there is only 2/10 of an acre on the entire 136 acres, which is next to the railroad by Merillat. He added G.B. Foltz has been hired to repair everything, Phase I being the most difficult, but the remaining phases should have no obstacles.

Mr. Hines stated this project originated with Cypress Creek proposing they would do a good job, which they did not, and is that Cypress Creek's or Energix's fault. Ms. Sink stated she is aware of this commentary and welcomes the opportunity to discuss it. She does not know where this is coming from because everything they are doing is in accordance with the permit. The site is still under construction, the landscaping plan and stabilization of the basin are going above and beyond. She stated they have worked with staff for months on various aspects of the project and have not heard further major issues. Mr. Hines stated Cypress Creek originally gave a wonderful slideshow presentation on how the land would look, showed a comparison to a facility in Amelia county, pictures of animals and butterflies bouncing around the solar panel area, but what is seen now after 3 years, 1.5 years of construction, does not reflect those images. Mr. Whitehurst stated construction did not begin until last September. Mr. Hines asked if Energix or Cypress Creek started this project. Ms. Sink stated Cypress Creek was the company who worked through the zoning permit with the Town, after that Energix acquired the project and is responsible for construction. Mr. Hines asked why Commissioners were not informed of the change, and the current site does not look as he envisioned it three years ago. Ms. Sink stated landscape enhancements are in discussions and they are required to fulfill these enhancements, and are expediting this process.

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Ms. Burner asked if anyone has spoken with Melinda Monroe regarding her concerns about the new solar farm. Ms. Sink stated Energix representatives have spoken with her, and she indicated she emailed her concerns and questions, included her property being devalued, to the Town Manager. Ms. Sink stated an appraiser they work with, who has surveyed approximately 70 projects on the east coast in Virginia, North Carolina and Florida, provided published findings there is no impact on property values, which was passed along to Ms. Monroe. In regard to Ms. Monroe's concerns about the water line, Energix is required to do a survey before starting construction, a state requirement, to identify any utilities and easements, but would also repair any issues that may occur. Energix will also provide additional landscaping around the outside of her property.

Ms. Odom asked if staff could get a copy of the information that was passed out by the applicant's representative and any correspondence with Ms. Monroe to have for the file. Ms. Sink stated they did copy Jay Neal, but would be happy to forward it. Mr. Hines asked Ms. Odom regarding the original ordinance standard of 400 acres maximum, is that the Town's request or standard for the state. She stated she did not work on the solar ordinance, but has seen 400 acres maximum as a best practice to try to maintain the size of the facility. Mr. Whitehurst stated regarding the acreage limit one of the reasons he brought this project forward is by adding those additional acres in Phase IV, tax revenue amounts for the Town/County increase greatly. His family made a promise when they started developing this land to help the Town/County as much as possible, and sees this solar site as doing that, as much as an industrial site would. Ms. Miller asked if Ms. Monroe approves the new panels around her, because the letter she sent Mr. Showalter indicated she objects to it due to the value on her property may be reduced. Ms. Sink repeated Energix has provided her all the information and has not heard any additional concerns from her, however would be happy to have additional discussion at her request, as they want to be a good neighbor.

Commissioner Andrick MOVED, seconded by Commissioner Burner to APPROVE Voting on SA 21-01.

Mr. Neal stated that motion is not plausible because Councilmembers will take a vote regardless. The question is would the vote be to defer, approve, or deny.

VOTE:

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Commissioner Andrick	Commissioner Miller Commissioner Burner Commissioner Hines Commissioner Ambrose		

1 AYE, 4 NAYS, motion denied

Commissioner Ambrose MOVED, seconded by Commissioner Hines to DEFER Taking Action on SA 21-01 Until Next Month's Meeting.

VOTE:

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Commissioner Andrick Commissioner Miller Commissioner Burner Commissioner Hines Commissioner Ambrose			

5 AYES, motion passed

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Commissioner Hines MOVED, seconded by Commissioner Miller to DEFER Taking Action on SUP 21-01 Until Next Month's Meeting.

VOTE:

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Commissioner Andrick			
Commissioner Miller			
Commissioner Burner			
Commissioner Hines			
Commissioner Ambrose			
5 AYES, motion passed			

New Business: None

Board of Zoning Appeals Report: None

Town Council Items – Mr. Andrick: None

Zoning Administrator Report – None

Board Members' Items: None

Mr. Whitehurst asked if all questions could be put together within the next week so they can be properly answered by the next meeting, and the Board responded yes. Mr. Whitehurst asked if there are any major questions that can be addressed tonight, since all applicant representatives are available on Zoom. Ms. Burner stated she has not heard from Mr. Showalter the answers to her previous questions so she would like to speak with him first.

Commissioner Miller made a motion to adjourn the meeting at 7:59 PM.

Submitted by: Deborah L. Allen, Town Clerk