

Mount Jackson
Town Council Special Meeting & Joint Public Hearing

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Special Meeting

Mayor Donnie Pifer called the Council meeting to order at 7:01 PM with Councilmembers Evelyn Burner, Brandi Freed, Judy Fultz, Bonnie Good, and Todd Holtzman in attendance. Councilmember Rod Shepherd was absent.

Also present Neil Showalter, Town Manager; Erick Moore, Planning & Development Director; Keith Cowart, Police Chief; Officer Christina Wharton; and Barbara Riggelman, Town Clerk. Eric Moore from Cornerstone Technology was present to provide Zoom service. Darla Orr, Zoning Consultant from The Berkley Group, attended via Zoom. Guests were Todd Bowman; David Luddy; Daniel Langston, PA with Christopher Consultants; Lori Schweller, land use attorney with Williams Mullen; Derek Sheehan, Director, Community Solar Business Development with Dynamic Energy; John Motta, Chief Development Officer, Dynamic Energy; and Jared Burden, attorney with GreeneHurlocker PLC. Visitors included Colton Henry, Alvin Henry, Suzanne Ross, Dan & Bonnie Bowman, Randy Doyle, Melinda Monroe, and Tommy Miller.

Joint Public Hearing

1. Substantial Accord Determination – SA-22-02 – Mt. Jackson Solar, LLC
2. Special Use Permit – SU-22-04 – Mt. Jackson Solar, LLC

Mr. Moore stated this Planning Commission and Town Council Joint Public Hearing was for Mt. Jackson Solar, LLC Substantial Accord Determination SA-22-02. The project location is on Hawkins Road. North of the property is Shenandoah County, to the west is I-81, to the south is Hawkins Road, and to the east is the proposed Shenandoah Rail Trail. Mr. Moore gave a slideshow presentation showing pictures of the project location and surrounding areas, the Town of Mount Jackson Zoning Map with the subject property shown, and Future Land Use Map. Mr. Moore stated that the Comprehensive Plan talks about not only current zoning, but also future land use zoning. Mr. Moore showed a map of growth area future land use; sometime in the future, this would be annexed from Shenandoah County; both the County and the Town have designated the shown areas to be both R-1 and R-2 residential. Grey areas on the map shown are currently Shenandoah County, but in the future, through annexation, the land annexed would be designated for those uses for housing. Mr. Moore showed a concept plan of the proposed project area, along with pictures of both before and after the proposed project is complete, showing a proposed 7' chain link fence with a 100' buffer, trees to be installed at 6' heights – the minimum height for when they are installed. Mr. Moore stated that full growth of the trees takes approximately a good 15-20 years, but the pictures show an estimate of a 10 year growth and the panels would still be somewhat visible from Hawkins Road and I-81.

Mr. Moore stated that the standards for review for a substantial accord, prior to locating public utility facility, whether publicly or privately owned, Virginia Code § 15.2-2232 requires an affirmative determination. Case SA-22-02 is the Substantial Accord Determination, to be considered by the Planning Commission. The Planning Commission review shall find that the general or approximate location, character, and extent of such facility is substantially in accord with the Town's adopted Comprehensive Plan. Mr. Moore stated from the Comprehensive Plan: The Future Land Use Maps provides guidance for future land uses, both within the Town and anticipated Town growth areas; establishes the location, character, and extent of development desired for the Town and its surrounding growth areas; identifies appropriate new growth while ensuring new development meets the Town's Vision and Goals as expressed in the Comprehensive Plan; and quality development that does not detract from the Town's small-town character and charm. Mr. Moore stated that within the Comprehensive Plan, Town growth areas: One of

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the biggest influences on the future growth and land use for Mount Jackson; the County's Comprehensive Plan provides for maintaining its rural character by encouraging more dense development at Town borders; the County mapped an area surrounding Mount Jackson, and the Town adopted the area as part of its Comprehensive Plan, as a Town Growth Area; this area is expected to grow faster and more densely than anywhere else while preserving the town's natural resources for tourism and protecting its scenic charm and small-town character; and as noted above, the Growth Area Future Land Use Map designates the property in the vicinity of the subject property as appropriate for R-1 and R-2 Low and Medium Density Residential Use. Mr. Moore presented a map showing current zoning and the future growth areas.

Mr. Moore reported population growth and housing needs as part of the Comprehensive Plan: The population of Mount Jackson has continued an upward trend and is projected to continue to increase to around 2,400 residents by 2030; population grew from 1,994 in 2010 to 2,283 in 2020, a 14.49% increase, with an increase of around 5% of the population of the County; a high estimate represents Mount Jackson growing to 10% of the total County population. The Town would have around 4,800 residents by 2030 and over 5,000 by 2040; the Comprehensive Plan provides a current and future need for housing growth to prepare for future growth; and the Town must ensure development is compatible with the character and history of the town, using regulation as necessary to prevent industrial pollution of water, land, air, and to protect local historical and nature resources, which are also important to the local tourism industry.

Mr. Moore reported that the Regional Rails-to-Trails Project is a part of the Comprehensive Plan. The subject property is next to the Shenandoah Rail-Trail Recreational Project, a Plan priority found in the Vision Statement which supports the Rail-Trail Project, and benefits generational wellness through recreational, cultural, and educational activities and promotes a vibrant community. The Town desires to be a visitor destination of choice and to create an environment in which residents and neighbors can live, work, and retire in a family-oriented community. Mr. Moore stated that the Rail-Trail Project is a town and county-wide objective with the ability to become a popular destination, enhance the historic downtown, and provide economy benefits from the recreational tourism. Bicycle tourism is one of the most popular forms of outdoor recreation and tourism. The Comprehensive Plan encourages the Town to develop this project to attract new tourism and boost local business. As such, the proposed solar project will be highly visible from the proposed trail. However, the project proposes to provide dense buffers along the property line edges of the site.

Mr. Moore stated that the Town's character and tourism economy is part of the Comprehensive Plan. The importance of protecting the scenic charm and small-town character of Mount Jackson is repeated many times throughout the Plan. The Plan stresses the importance of protecting the Town's tourism economy, preserving the character, quality, and safety of scenic corridors (especially near recreational and scenic areas) and discourages improvements that would degrade the historic and scenic quality of the roads. The important tourist entrances into the town should be carefully developed to minimize the visual impacts on the road and surrounding properties.

Mr. Moore reported that Staff recommends denial of SA-22-02. While a renewable energy source which promotes environmental responsibility (one component the Plan suggests the Town should promote), the location, character, and extent of the proposed solar power generating facility is not substantially in accord with the Town's Comprehensive Plan. The location, character, and extent of the utility scale solar facility is inconsistent with the Town's Future Land Use Map and the Town's Growth Area Future Land Use Map, which both designate the subject property and surrounding area for residential use. The Plan recognizes

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that this area should be retained for future residential development necessary to accommodate anticipated growth through 2040. The location, character, and extent of the facility is inconsistent with the Plan's goals for the Town as a visitor destination of choice and to support its tourism economy. The subject property abuts the Shenandoah Rail-Trail recreational project area, therefore, location of a utility scale solar facility contradicts the Plan's guidance that the Town should develop the rail-trail project as a way to attract tourism and boost local business. Mr. Moore reported that even if consideration is given to the proposed facility as a 20-30 year interim or temporary use, the Plan provides that the Town should ensure that new growth is quality development that does not detract from the Town's small-town character and scenic charm. The location, character, and extent of the utility scale solar facility is inconsistent with the Plan's intent for new growth. To advance the short-term implementation strategies of the Plan to permit a broad range of uses, the Zoning Ordinance was updated to permit utility scale solar facilities with the approval of a Special Use Permit in Agricultural (A-1) Zoning Districts. However, in keeping with the goals and values of the Plan, the Zoning Ordinance includes use standards to require that utility-scale solar facilities shall not be proximate to residences; historical, cultural, recreational, or environmentally sensitive areas; and scenic view sheds.

Mr. Moore presented slide show photographs of the current Zoning Map, Future Land Use Map and growth areas as explained previously, conceptual plan for the project, and photographs of the project site. The Zoning District Statement of Intent for the Agriculture (A-1) District is to preserve the character of those portions of the town where agricultural and other low intensity uses predominate and should include mainly agriculture and related uses, such as agricultural operations, conservation, game preserves, sanctuaries, roadside stands or markets, veterinary hospital, single-family dwelling, group home, and elder care facility. In relationship to the Comprehensive Plan, project reviews: Guide future town growth, physical, and economic development; promote health, safety, convenience, order, prosperity, and general welfare; apply Design Guidelines and Master Plans for growth; and scenic, historic, and Virginia roads merit special attention limiting adjacent development impacts with buffers/vegetative preservation. Community Design & Standards – minimum development standards state that a utility scale solar facility shall not be proximate to residences, historic cultural sites, recreational areas, environmentally sensitive areas, and scenic view sheds. Mr. Moore stated that this requirement cannot be met because several residential properties are located to the east as well as the future Shenandoah Rail-Trail recreational system. Mr. Moore stated that under Standards for Review, special use permits may be issued upon a recommendation by the Planning Commission which shall find that: The proposed use will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use; the proposed use will not be detrimental to the public welfare, or unduly injurious to property values or improvements in the neighborhood; the proposed use will not conflict with the policies and principles of the town's adopted Comprehensive Plan; and adequate public services, including streets and other traffic ways, utilities, police, and fire protection are or reasonably will be available to support the proposed site.

Mr. Moore reported that Staff recommends denial of SU-22-04 because it does not comply with the Comprehensive Plan. Specifically, the proposed utility scale solar facility is proposed on property designated by the Town's Future Land Use Map and the Town's Growth Area Future Land Use Map for Residential Use. The proposed facility abutting the Shenandoah Rail-Trail area is inconsistent with the Comprehensive Plan's Goals to continue to be a visitor destination of choice and to support its tourism economy. As one component, the Comprehensive Plan's Vision provides that the Town should promote environmental responsibility. Solar power generation is recognized as an environmentally responsible

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renewable energy source, but the proposed use is inconsistent with the Town's Comprehensive Plan. Specifically, the proposed utility scale solar facility is proposed on property in an area designated by the Town's Future Land Use Map and the Town's Growth Area Future Land Use Map for Residential Use.

Mr. Moore reported that if after public comment, the Planning Commission and Town Council determine it is appropriate to approve this request, such approval should be subject to the recommended conditions in Attachment B. All conditions are in addition to development complying with the requirements of the Zoning Ordinance. Proposed Conditions: Limit facility to 5 MW, require compliance with all other laws, annual soil testing and measures to reduce dust; ensure conditions are binding to current and future owners; provide for Town access to state permits and to site for inspections; require liability insurance, emergency operations plan (Knox boxes and training) and lighting to comply with Town code; require decommissioning plan to include methods for removing broken panels; establish timing for any violation responses, annual reports, commencing construction, and inoperability to trigger decommissioning; limit hours permitted for construction and decommissioning, measures to reduce noise impacts, and citizen notification of construction; limit use of overhead transmission lines and prohibit reflective materials; require setbacks for staging/storage areas; landscaping to comply with Zoning Ordinance standards; and require Tier 1 quality panels.

Mr. Motta reported that Dynamic Energy is headquartered outside Philadelphia, PA and gave a brief introduction to the company. He stated that this particular use, 20-30 acres, has become one of their main types of projects, primarily driven by state policy and legislatures in states like MA, NY, etc., implementing policies enabling renewable energy generators to provide credits to local homeowners who can affectively contract through the utility to receive credits from the generators. Mr. Motta stated that it is not a large industrial use that transmits power back to the transmission grid, which in this region of the world is a vast transmission highway that can contract with users as far away as Chicago; that is not what this is. This is smaller, local in connection to the distribution grid. Mr. Motta presented a map of where Dynamic Energy has been most active in the last decade or so, showing a high concentration on the East Coast. Many of the projects on the map are of similar scale, 3-5 MW, and usually this scale is mandated by state policy. There are also some electrical constraints in that regard as well. Mr. Motta reported that Dynamic Energy is a relatively small company with 60+ full-time employees. A couple years ago, they were purchased by a company called Pattern Energy Group, though they remain an independent operating company. Pattern is a significant, international developer owned by the Canadian Pension Fund, a \$500 billion enterprise.

Mr. Motta shared a snapshot of some of their projects throughout the world. Mr. Motta reported that a couple years ago, as part of the Virginia Clean Economy Act, there was a program that basically mandates Dominion to approve and provide for a total of 200 MW of this use. This project is inter-connected to Dominion Energy with a transaction benefit to those Dominion customers throughout the region. Specifically for that program, Mr. Motta reported that they have successfully advanced three other projects in Virginia. Mr. Motta stated that he was happy state legislatures put this program in place in Virginia as he is a graduate of Virginia Tech. This particular program type and use is all throughout New England and Virginia is one of the leading states over the last 5 years or so that have implemented this sort of policy; Mr. Motta has successfully seen projects of this type, 3-5 MW installed, and it is a great benefit. Mr. Motta stated that they have looked at many sites in Virginia; this is a competitive market - there's a lot of other developers seeking sites and there are only so many places to place solar. There are a lot of requirements, in particular a dry, flat ground and an interconnection. This particular site has both of these things, and there is industry to the south, effectively industry on the west with a highway that will not be going away,

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and an abandoned railroad to the east. For these reasons, Mr. Motta stated they are very interested in advancing this site, a site that he believes that isn't practical for housing and borders the abandoned railroad, which they have learned is a primary initiative of this town. Mr. Motta stated that they understand how important the rail-trail is to the town, and the landowner of the project has decided to offer a parking lot for the rail-trail to serve as a trail head and a bike repair station, to be provided by the applicant. Mr. Motta stated that he has received approval from his superiors over the last several weeks, and the project is willing to provide a one-time benefit to the town of \$100,000 towards campaigning for the rail-trail project. Mr. Motta added that they have spent significant time with Mr. Showalter, Mr. Moore, and Ms. Orr, working on the details of the project; there was no shortage of comments and over the course of December and January, they were able to get substantial feedback. Mr. Motta stated that they put a lot of effort into the design, especially the landscaping.

Mr. Sheehan stated that the project is Parcel #081 A 055 on Hawkins Road. Total parcel size is 40.5 acres, total proposed project area within the fencing is 24.3 acres. Total area under panel would be roughly 22 acres, with approximately 13,000 solar panels on the field. This would generate enough energy to power the equivalent of about 1,000 homes. The project is proposed to use a single-access tracking mounting system which will follow the sun through the day, east to west, which helps improve the production of the project. Mr. Sheehan stated that this is a community shared solar project, as referred to in Virginia; this is a great project, a small project to help preserve the small-town character. Additionally, these projects do provide for direct community participation, where people can sign up to receive a share of the production of the solar project, which typically can be a 10-20% savings on their electric bills, without any installation or change to the way the power is delivered to their homes. Mr. Sheehan shared a concept plan of the project, showing 150' setbacks around the project on all sides, with access from Hawkins Road, along with an aerial overview. There would be underground cabling running along the access road, two access pads, and 5-6 utility poles in the corner of the property that would connect the power lines to the existing power lines, which is the interconnection point.

Mr. Sheehan stated that there are existing stands of trees that will help to buffer the site, in addition to the proposed vegetative screening. They are proposing three different rows of screening, and have proposed maintaining the existing vegetation on the site to ensure the project is as tucked away as possible. Mr. Sheehan showed a picture of proposed plantings and landscaping. Trees will be 6' tall at planting, reaching a height of 15' minimum at maturity, and they are proposing a landscaping maintenance plan to ensure that any trees or plantings that are dead or dying will be replaced in a timely manner to maintain the vegetative buffer through the life of the project. The plan for landscaping maintenance they have established is for 1-3 years, so a general inspection will be performed quarterly on the landscaping plan, monitoring the property for invasive species and removal if found. No permanent irrigation system is proposed; the trees will be irrigated until established by the use of temporary water bags throughout the first year of growing, weeding monthly during the growing season, replacing mulch if necessary each spring, not allowing the mulch to touch the base of the shrubs, not to pile or layer mulch, keeping the total height under 6". Mr. Sheehan stated they have a recommended buffer plant species list from Christopher Consultants, and are open to suggestions on species to use. Species to be used include American Holly, Giant Arborvitae, and Oak Leaf Holly; ornamental trees include Downy Serviceberry, Eastern Redbud, White Fringe Tree, and Hawthorn. Mr. Sheehan showed an updated visualization of the panels, with updated setbacks, at different stages of vegetative maturity along with images from different directions.

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Mr. Sheehan reported, as to site considerations and benefits, there are no wetlands on this site or environmentally sensitive locations within the project area so there are no foreseen impacts to wildlife or conservation areas, state forests, or state national parks. Because over 16.5 acres of the project will remain in open space, this will allow for wildlife corridors and not be blocking the site off from access to wildlife. Solar in general, on a site that is flat like this, there is minimal site disturbance, including to the topsoil; little to no concrete used on site other than for the pads, and solar typically allows the soil to rest for the life of the lease of the project. Mr. Sheehan stated that the project typically looks like a land bank preservation; there is a reduction on agricultural load, fertilizers, and pesticides which allows the soil to rest and recover during the temporary use, which is solar. Mr. Sheehan stated that he mentioned temporary, as it is a 20 year lease that they have entered into with the landowner, so it is a temporary use and as a special use on agricultural, it doesn't require rezoning and the land can stay in agricultural at the end of the life of the project. The proposed natural vegetation and landscaping plan should significantly buffer the abutting roadways and the abandoned railroad, which is the location of the future rail-trail pathway. They have also proposed pollinator-friendly landscaping to promote quality habitat for birds and other species, which will also provide a nice complimentary neighboring use to a rail-trail. They have also performed a traffic study to determine there will be no impact to local area roads during construction or decommissioning. Mr. Sheehan stated they are estimating about 15 vehicles per day during the construction period, which should last roughly 6 months, and during this time, the heaviest amount of traffic will probably be 30-40 tractor trailers deliveries, which would for the most part take place within the first 2 months of construction. For decommissioning, they have submitted a reviewed and stamped decommissioning plan by a Virginia licensed third-party engineer firm, Christopher Consultants, which provides for full equipment removal and site restoration as required by the lease agreement and the cost is fully bonded prior to the start of construction. That cost is in place and will remain to cover the cost of decommissioning the project at the end of the life of the lease.

To touch on the Substantial Accord, Mr. Sheehan referred to the Vision Statement mentioned by Mr. Moore, to promote environmental responsibility. Mr. Sheehan stated that they have worked with Lori Schweller, land use attorney with Williams Mullen, a Richmond-based land use attorney firm, who helped them craft the Substantial Accord Determination for the Town's Comprehensive Plan. The project commits to erosion control and stormwater management in accordance with DEQ regulations and Town zoning regulations. Mr. Sheehan stated that one of the great things is the site is relatively flat, not in the flood zone, and additionally the amount of acreage surrounding the project should provide for additional controls in stormwater. They see no threat to groundwater, local rivers, and streams vs the standard agricultural uses; 40% of the parcel will remain in open space. Mr. Sheehan stated, on land use and zoning, it is the northernmost parcel in town; I-81 is to the west; the only parcel north of Mill Creek currently zoned A-1; parcels immediately southwest are zoned limited industrial and highway business, so this use would be appropriate considering neighboring uses. The initial presentation really focused on the residential parcel being to the east of the project, but Mr. Sheehan stated it is important to consider that the project is immediately abutted by industrial and highway, so they feel this is an appropriate location for a project of this nature. It is consistent with land use goals; low intensity of solar will provide for transitional buffer between the interstate and the Town's industrial uses to the west and south, and the county's existing ag and future residential uses to the north and east. Mr. Sheehan stated that the key Comprehensive Plan objective is ensure the Zoning Ordinance includes broad ranges including modern and flexible business uses; Section 8 includes the Ordinance should also permit a broad variety of commercial, industrial uses that are important to the economic development of the Town, including new or emergent uses, such as

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solar facilities, which obviously the Town had identified. Mentioning solar in the Comprehensive Plan that was adopted in 2017 does show foresight by the Town. Mr. Sheehan reiterated that this is in the Comprehensive Plan, including new or emergent uses, such as solar facilities, microbreweries, and other uses not considered by any zoning ordinances but important to modern commerce. Here there are no historic, cultural, recreational, or environmentally sensitive areas impacted; the applicant has done studies which were submitted as part of their special use application by Wetlands Studies and Solutions, a Virginia-based environmental firm.

Todd Bowman reported that he wanted to effectively communicate, from his perspective, the future use of the land as the landowner. He reported that during January, he submitted a letter to the mayor, which Staff is aware of, about some of the reasons for his future use of the land so there can be a clear dialogue about what is actually going to happen. Mr. Bowman stated that he has owned this land since his father's death; agriculture is what it has always been utilized for. In his opinion, agriculture is not the best use for the property. Currently it generates roughly \$1600 in total income for the year, which is about \$40/acre; that is essentially sufficient to cover most of the tax base for the other properties that he owns in the Hawkinstown area, so this is not a revenue generator for his family; it is pretty revenue-neutral. However, Mr. Bowman stated that he has continued contracts with a number of gentlemen who have farmed this land since his father was alive, and they continue that relationship. Mr. Bowman stated that there was a lot of discussion about residential; he also believes that residential is not the best use for this property. The proximity to I-81 would necessitate the construction of a sound barrier. In the state of Virginia, sound barriers cost roughly \$4 million per mile. This would be a \$1.3 million construction project to make this residential. Mr. Bowman stated that if you look at the Comprehensive Plan, there is a specific section that talks about truck noise, because 27% of the traffic on I-81 is going to be tractor trailers. Many know what Jake Brakes are and what they sound like; there's a lot of noise on this particular parcel. There is a reason it has been agricultural for a very long time.

Mr. Bowman referenced it's proximity to a brand-new 155,000 sq. ft. Bowman Andros plant, with two 72' industrial storage silos. Mr. Bowman showed a picture of the project site in location to the Bowman Andros facility. It is 368' from a 155,000 industrial processing plant, not a good residential area. In addition, the Town has a variance for two 72' tall industrial storage silos; they are not present in the pictures shown, but one has since been installed. Mr. Bowman reiterated that this is an industrial zone; which it has been for a very long time. It has been an industrial zone since his family ran Bowman Apple Products; in his opinion, it continues to be that type of zone. The proximity to an electrical substation has been talked about; obviously this makes the site a perfect spot for solar, but not exactly a perfect spot for kids to play across the street from a substation. Mr. Bowman read a quote from former BZA chairman Robert Whitehurst, who with a variance approval for the 72' industrial storage silos, was quoted as saying, "it is the best place it could be, away from the people who live in the town", and yet this land is still marked as part of Mount Jackson's plan as residential. Mr. Bowman stated that he feels this is fairly contradictory. In closing, Mr. Bowman stated that the property lacks required residential qualities due to all of the above, and he has no intention of selling this land, either now or in the future. This land is part of his family's legacy of the Valley and it will remain so in perpetuity. Essentially, if pushed to do so, Mr. Bowman stated he could enter into a conservation easement, which will ensure this land could never be owned. If you look at the two properties across the street, they are represented by the home Mr. Bowman grew up in and his grandmother's home; both of those properties are already under a conservation easement and can never be developed in the

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future. Mr. Bowman reiterated that he wanted the Planning Commission to understand that regardless of what the Plan says, this land will never be residential either now or in the future.

Mr. Hines asked Mr. Sheehan if he could explain the subscription he mentioned, how much the subscription would cost, and how many people would be needed. Mr. Sheehan answered that the project should produce the equivalent output of about 1,000 electric-use homes, and these programs are free to sign up so there is no cost to enroll, no cost to cancel. They are first-come-first-serve. The Commonwealth has approved 200 MW; there is a plan to expand that to a larger number. Mr. Hines asked for clarification that the site would produce 5 MW and 2 are available for subscription. Mr. Sheehan clarified that it would be for the whole 5 MW. Mr. Sheehan touched briefly on an economic benefit slide to conclude the presentation. Mr. Motta stated he wanted to make sure it was clear, as it is a key part of the project in general, that this is a practical, net-positive for the town. In this case, as a project of this size, there is no incremental cost for the town; there is no addition to children in schools, roads to plow, or things of this nature. 80 construction professionals or so will come to town for a half year period to work on the construction of the project. There is a Commonwealth-local organization called Shine, that is tasked with work force training for this project that they will participate or partner with. Mr. Motta stated the real estate tax revenue and per Virginia Code § 58.1-2606.1, there is a revenue sharing mechanism that is set by law that in this case, the 5 MW would equate to \$7,000 per year, which they have discussed with Mr. Showalter. Also, in understanding the importance of the rail-trail, even if it may not come to pass, Mr. Motta stated they wanted to demonstrate emphatically their interest in supporting the town in that endeavor, particularly given the unique position that this particular site is in to do that. Mr. Motta showed a visual they did recently as to what this would look like, utilizing the access road to the project for the public use and what the applicant perceives to be the proposed rail-trail route, going around the industrial plant.

Comments from the Public

1. Alvin Henry stated that his family has lived on this road for 93 years, traveled this road for many years, watched this property, watched corn being grown, as well as alfalfa and soybeans. Mr. Henry stated that he worked for Mr. Bowman's grandfather back in the '70s when the academy owned this farm. The Massanutten Military Academy owned the property and he actually worked on the farm, plowing corn, weed eating, etc. so he is very familiar with this property. Mr. Henry expressed his compliments to the Staff on their presentation and he felt they did an exceptional job of stating all the reasons for denial of this project. Mr. Henry stated that there are some loopholes in what has been presented by the applicant. He stated that Staff has some very good photographs of the property; they showed photographs earlier, taken from Rt. 11, showing the railroad, showing I-81 behind it, and also a photograph that Staff provided of Hawkins Road. Hawkins Road, at the very beginning crosses the railroad tracks, drops down to the grade of the property, and as you approach the bridge, the grade gets very high. Mr. Henry stated that if the applicant can get a tree to shield that view from all of Hawkins Road, it would have to be a very large tree. Mr. Henry stated that the railroad is not on grade; there is also a very high ridge where the tracks are laid and he estimates this at 10-15' high. The applicant pointed out the vegetation along the railroad will be preserved. Mr. Henry stated that the property was farmed and farmers cut the vegetation to the fence. Most of those trees are not on Mr. Bowman's property, it is on the railroad property, so they are offering to protect something that they can't really protect. There are a few trees along I-81, which Staff's photos showed a better depiction than what was provided in the applicant's simulation. Mr. Henry believes these trees to have been planted back when I-81 was built in the '60s. They are tall, but nowhere near blocking

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the view shed from I-81 up to the property, so he feels the presentation about the trees is a little questionable. If you look at the trees which were used at Turkey Knob, he believes they are the same variety as shown. The trees at Turkey Knob are dying and these types of trees are very susceptible to bag worms.

Mr. Henry stated that the Town's Comprehensive Plan mentions historical resources. Mr. Henry stated that he had some visitors with him that were willing to allocate their 3 minutes of time to him if this would be allowed. Chairman Ambrose consented to this. Mr. Henry reiterated the historical aspect. Mr. Henry presented a paper to the Commission and Council. He stated that there was an old schoolhouse behind the Hawkinstown United Methodist Church up until about 20 years ago. In the 1850s, the schoolmaster was John Henry Kagey. Mr. Kagey taught there for 2 years and was so incensed against slavery that he left town, traveled the country raising issues against slavery, and returned to become John Brown's Secretary of War in his provincial government. This is one of the pieces that developed into the Civil War. Mr. Henry supposed that Mr. Kagey would sit in the school house, look across the fields at the slaves working the Beverly Farm, and this developed his determination to change slavery. So John Brown's Secretary of War taught school here, which is a pretty big historical item to address. Mr. Henry stated that the Battlefield Foundation just learned of this fact about a month ago and there is documentation on it. Mr. Henry also addressed revenue on this property. The State of Virginia has a tax program for solar fields. Basically, you can depreciate a solar field in a couple of years. It is Mr. Henry's understanding that tax revenue goes to the State Corporation Commission, who determines what goes back to the localities; the end result being this project may cost many millions of dollars, but will all be written off in a year or two, so what is returned to Shenandoah County and Mount Jackson is a teacup.

Mr. Henry stated that in the applicant's presentation, they said that the tax revenue is going to be substantially greater than the property under land use taxation. Mr. Henry stated that land use taxation is to protect agriculture and is a few dollars per year of taxing. To say this is substantially greater, you must read the fine print, because this will not be a revenue generating item for the town. The Comprehensive Plan speaks to economic development and things that will make the town better, and the revenue is not here in this project. Mr. Henry stated that it would be good for Mr. Bowman and he deserves it, but it is not something for the town. Mr. Henry stated that if you look at the town, this property should be zoned industrial. It is probably the most valuable piece of property the town has in its jurisdiction because there is water and sewer across the street. You get off I-81, come down Rt. 11 to Hawkinstown, and you are at the property. If you are delivering with a truck from I-81 to a warehouse, like in Strasburg, it is an easy location to access. Mr. Henry stated that this is a very valuable piece of property and urged the Town not to just give it away for a few dollars. Mr. Henry stated that he lives on Hawkins Road; they have accepted the Andros factory, they have accepted I-81, they have accepted the cell towers, the radio towers, all the lights, and they would like some consideration here for an alternative use for this property.

2. Randy Doyle stated that Mount Jackson is the solar capital of beautiful Shenandoah County - he doesn't think this is a designation that anyone who has a vested interest in Mount Jackson wants. Mr. Doyle stated that he is against this project for three reasons. One, as the Staff pointed out, it is inconsistent with the town's strategy of tourism and agriculture, and he complimented Staff. Two, when you look at the financial benefits to the town, as Mr. Henry just mentioned, there is a great potential for industrial use. More than likely, whatever it could become, it would be a job-creating business venture as opposed to a solar field. By making this a solar field now, we know that for the next generation it will not be able to be used for any other economic development. Three, in relation to the environmentally-responsible decision, in

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participating in these conversations with the last solar hearing, Mr. Doyle stated that he found a similarity in that one of the motivations for doing the 500-acre solar field, and what he found ironic, is the dominating conversation of this Town Council was all of the new environmental issues that were being created from the solar field, whether it be runoff, toxins leaching into the soil, damage to wildlife, or if the land could be restored to agricultural use after 25 years. All of these new environmental issues that dominated the conversation, when all along it was supposed to be “the environmentally-responsible decision” and he would say that same sort of sword of Dynamic is at play with this solar field here.

3. Bonnie Bowman gave her allotted 3 minutes to Mr. Henry. Mr. Henry again addressed the meeting. He stated that the County, very quickly after the town approved Turkey Knob, realized that they had an ordinance that had problems. The County has spent the last year reworking their ordinance. They have come up with a lot; they take this very serious. Land is very precious. What they have recognized, and is primarily one of the focuses of their ordinance, is that solar fields need to be placed on less desirable land. They should not be put on a prime agricultural land. There is land in this county that has limestone, shale, and this land here is ag. Mr. Henry stated that it was recognized earlier that it may be an industrial use, but presently it is a prime agricultural soil. Mr. Henry stated that this property at 40 acres could potentially produce 225 bushels of corn per acre, with the potential if you convert it to poultry, to make 160,000 lbs. of chicken from the food you developed from the corn. This is material. Mr. Henry stated that Mr. Bowman made reference to the Virginia Outdoors Foundation; Mr. Henry has a property on Walker Road that he bought. Mr. Henry stated that he loves this property and he put it in the Virginia Outdoors Foundation also so nothing can happen to it, during his lifetime or after. Mr. Henry stated that he has also been approached by solar companies because he is across the road from a substation. They wanted his land, but it was off the table. Mr. Henry stated he appreciated Mr. Bowman’s consideration of this.

4. Suzanne Ross signed up to speak, but had no comment.

Chairman Ambrose stated there were no other speakers signed up to speak and would close the Joint Public Hearing at this point. Mayor Donnie Pifer called for adjournment of the Town Council; motion was made by Councilmember Holtzman. Mr. Moore pointed out, as point of order, the applicant has the opportunity to respond to comments made by the public, followed by Staff’s final comments. Chairman Ambrose apologized for this oversight. Mayor Pifer stated that he would hold the motion to adjourn.

Rebuttal from the Applicant: Mr. Bowman stated that he grew up in Mount Jackson, went to Ashby Lee Elementary, Triplett Middle School, and to Stonewall Jackson High School for one year before going to boarding school and then Davidson College in North Carolina. He remained in that area and built an ecommerce business for the Belk family. Over the course of a 20 year career, he took a \$1 million ecommerce website and turned it into a \$700 million ecommerce website. Ultimately the family sold the business and Mr. Bowman took that time to get out of the corporate world. Mr. Bowman stated that he lives in Waxhaw, NC, a small town just south of Charlotte. Mr. Bowman gave a brief introduction to his family members, specifically his wife, two children, and his father-in-law, David Luddy, who was a visitor tonight, so that the town would know that he has ties to the town. He stated that as previously mentioned, about 5 years ago the town was swarmed with solar applications. Mr. Bowman stated that he and Mr. Luddy have put in hundreds of hours working on this project and they signed the initial lease with Dynamic 900 days ago; most of the activity for this project, for them, has taken place in the last few months. He stated that a lot of this, the effort they have put in, is part of the reason that they find the Staff’s report so disappointing. In his opinion, the truth about solar in Mount Jackson is that most of the problems they have

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encountered with their presentation, more than a small degree, is tied to the solar project already existing. He doesn't feel they created these problems, but they inherited them because they came second. Mr. Bowman stated that the documentation they provided, in his opinion, is a lot of smoke and mirrors to distract from that simple fact.

Mr. Bowman stated that we've heard a lot about the Comprehensive Plan tonight. This is not a legal regulatory document; it is not like a zoning ordinance; it is not like a subdivision ordinance; it serves as a guide for town leaders and property owners when making land use, fiscal, and other decisions. He quoted from page 1 of the Comprehensive Plan, "it is important to note that the Comprehensive Plan is not a legal regulatory document like the Zoning Ordinance or Subdivision Ordinance. Instead, it is a vision for what the citizens and leadership of Mount Jackson want the Town to be in the future. The plan will serve as a guide for Town leaders and property owners as they make many land use, fiscal, and other decisions over the coming years." Virginia Code requires the Comprehensive Plan to be reviewed every 5 years, has this taken place? This is from 2017. Mr. Bowman stated that this is a question for everyone. Mr. Showalter stated that there have been several sessions with the Planning Commission. Mr. Moore asked if this was a question, to which Mr. Bowman stated it was. Mr. Showalter stated that the Plan is under review. Mr. Bowman stated that the main thing is to clarify that in addition to the fact that this is not a legal document, this document is also out of date per Virginia State Code. It is over 5 years old. Ms. Good stated that the State of Virginia requires the Town to use the Comprehensive Plan to designate whether this project is in substantial accord with it, so regardless of whether it is a legal document, like an ordinance, it is required that they look at it through that eye. Mr. Bowman stated that he completely understands and respects that decision. With regards to that, there was a statement made that solar is inconsistent with the Town's Comprehensive Plan and the Town's Future Land Use Map, both of which doesn't make the subject property and surrounding area residential use. Mr. Bowman reiterated, since he doesn't feel his letter to the Town had much impact, that this land will never be residential. In his view, the Staff recommendations in response to that say one of two things: We don't care what you think as a landowner, we decided this land is going to be residential or we've already effectively rezoned all of the Town's land by considering our Comprehensive Plan to be a legally binding document, which is a violation of Virginia State Law.

Mr. Bowman stated that he was a political science major in college. He stated he didn't understand what a town telling a landowner how to use his land meant, so he did some research. Mr. Bowman read a quote from a political science document that he discovered. "A political system in which the government directs landowners what they should do with their land is commonly known as a command or planned economy. In this system, the government controls all aspects of the economy including land use and property rights. Under this system, the government has the power to dictate how the land is used, who can own it, and what properties are allowed on it. Landowners are not free to make decisions about their property unless they comply with government directives. This type of system is typically associated with social and communist regimes, where the government plays a central role in planning and directing economic activity. It is often used to achieve social or environmental goals, such as wealth redistribution, protecting natural resources, or promoting a particular type of land use. While command economy may be effective in achieving specific objectives, it often comes at the expense of individual freedom and economic efficiency. Critics argue that it can stifle innovation, discourage investment, and create inefficiencies in the allocation of resources." Mr. Bowman stated that he did not believe that Mount Jackson is governed by a socialist government, nor was he suggesting this, however, this document was prepared in willful ignorance of the landowner's intentions and the landowner's communicated intentions. The Town said that they have it zoned as residential; the

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landowner said it's never going to be residential; the Town's response was that it is residential. Mr. Bowman stated once again, it is not going to be residential and the war of words is pointless, in his opinion. He stated it is a waste of everyone's time to go through this process to receive this recommendation, which is really not a grounded recommendation. Mr. Bowman stated that this father used to say that the world will determine what you are, not by the words you say, but based upon the actions that you take. He hopes that that is something that everyone in this room takes to heart. Mr. Bowman quoted, "the world is a better place, humanity is a better place, individuals thrive more freely when they are pursuing their full human potential. When government is too heavy handed in that way it diminishes the individuals freedom and potential, and does not make the world a better place." Those words were spoken by Mr. Todd Gilbert, Speaker of the Virginia House of Delegates, 15th District, who lives here in Mount Jackson. Mr. Bowman stated that he believes Staff's response in this case is a fairly substantial case of governmental overreach.

Mr. Bowman stated the second point, that solar is inconsistent with the Town's goal to be a visitor destination of choice, his response is this is a 25 acre postage stamp of a solar farm, compared to a 700 acre project the Town has already approved, a project which admittedly is far more visible than this one would be. Unlike the other solar project, this property is beside a major highway, beside an industrial facility, it is the northernmost edge of town, far away from retail, restaurants, and tourist attractions. It will be completely screened on all sides; it is invisible from Rt. 11 due to the rail berm. Mr. Bowman asked if the Town believes that Hawkins Road is suddenly a hotbed of tourism for the Town of Mount Jackson.

Mr. Bowman addressed the Rails-to-Trails Initiative. He stated that he believes that this is a wonderful initiative, one that will be incredibly valuable for the Town, and something that all the citizens and businesses of Mount Jackson should get behind. Mr. Bowman stated that current funding received by Shenandoah County is \$3 million from the federal government budget last fall and \$1 million from the Virginia State Budget. Construction costs of the trail is currently estimated at \$2-3 million per mile of trail. That quote is from the Rails to Trails Conservancy website. Shenandoah County is planning 49 miles of trail, which would be \$100-150 million to build the trail. The trail also now has strong organized opposition from well-financed local businesses in the form of the Shenandoah Rail Corridor. Mr. Bowman stated that the original \$200 million that Virginia approved in the biennial budget has been whittled down to \$93 million and then finally \$89 million. Competition for the funds is fierce. The Commonwealth Transportation Board has authorized a \$1 million grant which was mentioned to 5 different projects: The Eastern Shore Rail Trail, the Shenandoah Valley Rail Trail, Tobacco Heritage Trail, Peaks to Creeks Trail, and Craig Valley Trail. The \$43 million Fall Rail Trail Enrichment has a \$266 million price tag attached to it. Mr. Bowman stated the need to be realistic about the amount of funding Shenandoah County can expect to receive for Rails-to-Trails. He stated that the reason he made this point is because personally he believes that private funding in support is going to be absolutely critical and necessary to the development of Rails-to-Trails. In his opinion, having an extra \$100,000 for Mount Jackson would be beneficial; and it would be beneficial to have another grateful community-focused landowner in your corner. Mr. Bowman stated that it has been stated repeatedly that Rails-to-Trails would have a positive increase on surrounding land values. The two documents the Town published state very clearly that Rails-to-Trails is going to have a negative impact on his land because of this denial. The proof of the damage that it has done to his project is in the Staff recommendation, and Mr. Bowman believes Staff will need to explain themselves to the Rails-to-Trails group when he has conversations with them. He stated that, taken altogether, he finds it questionable that the Town could have the power to deny applications based on outdated information, arbitrary forecasts, and the other information that has just been discussed. Having said that, Mr. Bowman

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stated he does not envy the position of anyone on the Planning Commission; he has spent plenty of time the last two months watching videos of individuals coming to the Planning Commission and being blasted for solar and we did not see that tonight. Mr. Bowman stated that he was very grateful the Town of Mount Jackson is still an incredibly civil, welcoming, and inviting place. He believes the presentations that were made by individuals from the town, he took notes, they all have merit, but unfortunately, on his side, what you're dealing with is very strong willed, business oriented, legally inquisitive landowner who has come in the door with a whole range of legal precedence in his pocket. Mr. Bowman stated that the 14th Amendment Equal Protection Clause has been successfully used in claims where similarly situated landowners have received different treatment from the local government. The Town's judicious documentation of the Whitehurst Energix Project by meeting notes is exemplary. Mr. Bowman stated that from those notes, it becomes abundantly clear that to have the most direct path to having a solar project green-lighted is to get himself elected to the Planning Commission. Mr. Bowman stated that there was probably a number of people in the room who would probably have a comment about that, and he was not pointing a finger at Ms. Good. Chairman Ambrose requested that Mr. Bowman please conclude his rebuttal.

Mr. Bowman stated that the second piece of case law tied to landowners successfully challenging the city or town's comprehensive land use plan, case law tied to landowners successfully challenging this approach to the solar project denial, due to the town failing to follow its own solar ordinance. As someone who grew up in this town, and someone who loves the town of Mount Jackson, Mr. Bowman stated that he believed he went after as many scenarios as he could possibly find. He stated he had lots of conversations with a lot of the people here, tried to open some doors, potentially find ways to could work together; ultimately he feels he was unsuccessful, which is disappointing. Mr. Bowman stated that whatever decision is made tonight will likely create friends and enemies for the Town and the members of the Planning Commission and that is unfortunate and he wished everyone the best of luck.

Response from the Staff: Mr. Moore thanked everyone for coming to the Joint Public Hearing, the applicants for their presentations, the guests for showing up and expressing their views. Mr. Moore stated that the only thing that Staff wanted to respond to is the 100' setback is a requirement and the placement of any type of parking or anything like that will interfere with what Mr. Sheehan discussed with the 100' buffer of landscaping. If you put in a parking lot, it's not going to have any buffering or landscaping, so that would be an issue. When environmental responsibility is discussed, the Comprehensive Plan does state that it is a thing that the Town does believe in; the Comprehensive Plan talks about our rivers, our mountain views, our scenery, and that these are the things we are going to promote for tourism. In this day and age, if you look at many of the other areas, when you have people who want to ride on the trail, walk on the trail, these are amenities that future home buyers are looking for and pay for. Mr. Moore stated that housing has been in the past and continues to be a priority for the Town. Due to the 2020 Covid, a lot of things stopped, a lot of things slowed down, and there have been 2 major housing development people talk to the Town about major developments because of the trail and the location along the trail. Other than that, Mr. Moore stated that he is available for any other questions or comments. The Comprehensive Plan, October of 2017, was passed with significant input from the citizens of the Town, reviewed extensively by the Planning Commission, and was adopted by the duly elected officials of the Town Council. With the upcoming one that is still being worked on, Mr. Moore stated that he began working on it when he came on staff, it is still being evolved, and any questions about that he would be happy to answer.

Mr. Showalter stated that he would like to add some things since the Staff was being attacked. Mr. Showalter stated that on November 14, 2022 at 4:12 PM, he received a phone call from Mr. Bowman, who

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wanted to speak with him directly about the conversations that his group was having with the Staff, and Mr. Showalter told Mr. Bowman at that time that the Substantial Accord Determination was going to be in play. Mr. Showalter stated that he and Mr. Bowman had a long discussion about that, so that should not be a surprise to him or anyone in the group. Secondly, what is a surprise to the Staff and to the people here tonight, is Mr. Bowman's \$100,000 offer to place a rail-trail entrance. Mr. Showalter stated that he wanted the Planning Commission and Council to know that Staff just learned of that today, so it hasn't been analyzed in any of the materials and there would need to be some discussion about a condition that would incorporate this if they wish to recommend approval with conditions. Mr. Showalter stated that he wanted to emphasize that the Substantial Accord question is not a new question to anyone in this room.

Ms. Freed stated that Mr. Bowman mentioned that he sent a letter and asked if he mentioned in that letter the residential opportunities to go along with the Comprehensive Plan not being something he would use the land for in the future. Ms. Freed stated that there was a lot of focus on residential on this, but she didn't see anything about this, so she was wondering if that was known when Staff put together their presentation. Mr. Moore stated that the Comprehensive Plan is not just for determining what is going to be rezoned in the future, it has major significance for the economic development to the Town. When the state and federal government says they want to help with endeavors, they will ask what the Town's Comprehensive Plan is - if you're not planning for it, it is not going to happen, so why should we give you millions of dollars to do something if it will not even be thought about by the people of the Town. Mr. Moore stated that, along those same lines, there was a letter that was sent earlier of other lands being provided in consideration that were actually in Shenandoah County and not even part of the Town. Mr. Moore stated that he asked Mr. Sheehan earlier today to provide a drawing of what they were going to propose and was told that it did not exist. Other than that, Mr. Moore stated that things have been above board and they have been helpful, but Staff had to focus with a substantial accord under state law that this is a substantial accord determination based on the Comprehensive Plan and Staff laid out point after point, but if there are any details or questions, he would be happy to answer them. Mr. Bowman offered to give Ms. Freed a copy of the letter. Mr. Showalter stated that it was provided to all the members of the Commission and Council; a letter from Mr. Bowman to the mayor is in the materials.

Mayor Donnie Pifer called for adjournment of the Town Council; motion was made earlier by Councilmember Holtzman, motion seconded by Councilmember Fultz; meeting was adjourned at 8:49 PM.

ROLL CALL VOTE:

<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Councilmember Burner			
Councilmember Freed			
Councilmember Fultz			
Councilmember Good			
Councilmember Holtzman			
			Councilmember Shepherd

5 AYES, 1 ABSENT, motion carried