

Mount Jackson
Town Council Regular Meeting

April 11, 2023

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Public Hearing

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

Mayor Pifer opened the public hearing at 7:00 PM in the council chambers at 5901 Main Street. Mayor Pifer announced that there were two items on the agenda and Council would entertain Staff's presentation, applicant's presentation, and any speakers on both items during the public hearing. Council will vote on each item separately. Council will have opportunity to ask questions at the appropriate time.

Mayor Pifer stated that the first item is SA-22-02: Mt. Jackson Solar, LLC requests Council overturn the Planning Commission's determination that the proposed utility scale solar facility is not in substantial accord, relative to location, character, and the extent with the Town's Comprehensive Plan as required by Virginia Code § 15.2-2232 to construct and operate a new utility scale 5MW alternative current ground mounted solar facility on 24.3 acres of a 40.5 acre property owned by Bowman MT Jackson Real Property, LLC, identified as Tax Map Parcel 081-((A))-055 and zoned A-1. The second item is SU-22-04: Mt. Jackson Solar, LLC requests approval of a special use permit Case SU-22-04 to construct and operate a new utility scale 5MW alternative current ground mounted solar facility on 24.3 acres of a 40.5 acre property owned by Bowman MT Jackson Real Property, LLC identified as Tax Map Parcel 081-((A))-055 and zoned A-1.

Staff Presentation:

Erick Moore gave a PowerPoint presentation of SA-22-02. Mr. Moore stated that the Zoning Ordinance provides solar facility, utility scale, with the approval of a special use permit in an Agricultural (A-1) Zoning District. In a companion case, the applicant is seeking approval of a special use permit (Case SU-22-04) to provide a solar facility. The request is to install and operate a 5MW alternative current system with ground mounted panels located on 24.3 acres of a 40.5 acre parcel, which requires an affirmative substantial accord determination and approval of an SUP in the Agricultural (A) Zoning District. Under Virginia Code § 15.2-2232, the substantial accord determination is based on the Comprehensive Plan Review. Utility scale solar facilities, public utility facility proposals (solar panels), require affirmative determination by the Planning Commission to be substantially in accord with the Comprehensive Plan, or part thereof, and shall determine general or approximate location, character, and extent of such facility in accord with the adopted Comprehensive Plan. Mr. Moore stated that the Planning Commission determined that SA-22-02 was not in substantial accord as required by Virginia Code § 15.2-2232. The property is currently zoned Agricultural (A). Within the Zoning Ordinance, the Intent of the Agricultural (A-1) District is intended to preserve the character of those portions of the town where agricultural and other low-intensity uses predominate. The permitted uses should include mainly agriculture and related uses.

Mr. Moore showed an area view of the subject parcel. Mr. Moore stated that the Town's Comprehensive Plan adopted October 30, 2017 states: Future Land Use Maps provide 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 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 showed the subject parcel on the Mt. Jackson Zoning Map and Future Land Use Map. Town Growth Areas, as stated on The Comprehensive Plan: One of the biggest influences in the future growth and land use for Mount Jackson; County's Comprehensive Plan provides for maintaining its rural character by encouraging more dense

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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 shown, 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. For Population Growth and Housing Needs, the Comprehensive Plan states: 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 (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. In relation to the Town's Character and Tourism Economy, the importance of protecting the scenic charm and small-town character of Mount Jackson is repeated many times throughout the Comprehensive Plan. The Plan stresses the importance of protecting the Town's tourism economy; is to preserve the character, quality, and safety of scenic corridors, especially near recreation and scenic areas, and improvements that would degrade the historic and scenic quality of the roads; and states that important tourist entrances into the town should be carefully developed to minimize the visual impacts on the road and surrounding areas.

Mr. Moore stated that the subject property is next to the Shenandoah Rail-Trail Recreational Project, which is a Plan priority found in the Vision Statements, which supports the Rail-Trails project. The project benefits generational wellness through recreation, 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. The Rail-Trail project is a town and county-wide objective with the ability to become a popular destination, enhances the historic downtown, and provides economies benefits from the recreational tourism. Bicycle tourism is one of the most popular forms of outdoor recreation and tourism. The 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.

On March 6, 2023, Staff recommended denial of the request for the following reasons: The Comprehensive Plan's Vision Statement provides, as one component, that the Town should promote environmental responsibility, and solar power generation is recognized as an environmentally responsible renewable energy source, which currently exists in the Town; 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 for Low Density Residential Use; the Plan recognizes that this area should be retained for future residential development necessary to accommodate anticipated growth through 2040; and which the subject property is currently zoned Agricultural (A-1), in compliance with the Goals and Values of the Comprehensive Plan, the Zoning Ordinance was adopted to identify that utility scale solar facilities shall not be proximate to residences, historic, cultural, recreational, or environmentally sensitive areas and scenic view sheds. In relationship to the Comprehensive Plan, Project Review Objectives: Encourage efficient use of land to enhance property values and tax base; promote appropriate and economic development; enhance employment opportunities; ensure compatible with small-town character and history;

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guide future growth, physical, and economic development; implement economic development policies; and promote health, safety, convenience, order, prosperity, and general welfare. Within the Long-Range Land Use Planning, the Citizens and Leadership Vision: Developed by citizens and Town's leadership; the primary goal is to provide for public health, safety, convenience, and welfare of its residents; guides future community, physical, and economic development; protect and improve Town's resources and small-town character; and ensure future development is compatible with small-town character, charm, and history.

Mr. Moore moved on to item #2, SU-22-04, the Special Use Permit. Mr. Moore stated that the Zoning Ordinance provides solar facilities, utility scale, with the approval of a special use permit in an Agricultural (A-1) Zoning District. Special use permit considerations Standards for Review are: 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; adequate public services, including streets and other traffic ways, utilities, police and fire protection, are or reasonably will be available to support the proposed use; and compliance with the Community Designs and Standards. Mr. Moore showed slides of the subject property, layout of the project area, views from each direction, and the subject property on the Mount Jackson Zoning Map and Future Land Use Map.

The Statement of Intent for the A-1, Agricultural District, is to preserve the character of those portions of the town where agricultural and other low-intensity uses predominate. The permitted uses should include mainly agriculture and related uses, such as agricultural operations, conservation, roadside stands, single-family dwellings, group homes, and short-term rentals. Mr. Moore revisited the Standards for Review and the Citizens and Leadership Vision. A Joint Public Hearing was held on March 6, 2023 in which the Planning Commission determined that SA-22-02 was not in substantial accord, and additionally the Commission voted to deny SU-22-04.

Applicant's Presentation:

Ms. Schweller stated that the Planning Commission found the project was not in substantial accord with the Town's Comprehensive Plan. Staff analysis is based on two factors – that the Future Land Use Map designation of the subject parcel is residential, and the proximity to the potential future rail trail park through town would deter tourism. Ms. Schweller stated that there are additional factors for consideration – the nature of the Comprehensive Plan and the flexibility of future land use, current zoning and use of the neighboring parcels, and other Comprehensive Plan Goals, such as economic development and environmental responsibility. The Comprehensive Plan is a guide, not law, as the Virginia Supreme Court states. The Comprehensive Plan itself states that it is “a picture of what zoning in the Town could look like over the next 20 years or more” and “does not change what is allowed on a property right now.” The Future Land Use Map cannot foresee what development will occur and what will be desirable in the future in a particular location as property around it develops. It is common for developments to be approved that are different from what the Plan envisioned when it was approved. Ms. Schweller stated that in the Staff Report at the last hearing, the Town “desperately” needs the land for residential because the Town's population has grown with 289 people in the last 10 years. If you look at the Growth Area, which was emphasized in the previous presentation, 90% of land in the Growth Area is designated for residential development. There is plenty of land to accommodate the future growing town, but the subject property is not feasible for residential development because neighboring industrial use precludes future residential development. Right next door, 368' away, is a 155,000

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sq. ft. industrial processing facility with two 72' industrial storage silos. The property is right next to I-81, which is one of the top freight corridors in the country. Construction of a sound barrier would cost \$1.3M, so residential development is not practical.

Ms. Schweller stated that the other concern was that the subject property is near a potential rail trail. The rail trail has been discussed in the narrative of the Comprehensive Plan; there is no clear delineation, designation, or easements on neighboring properties. The impact that concerned Staff and the Planning Commission was visibility. Ms. Schweller stated that there will be no impact because of the 100' wide buffer. Furthermore, another solar facility was approved abutting the potential future rail trail.

Ms. Schweller showed a slide listing the evergreen and deciduous trees, which would be planted as a three-row planting buffer and will completely screen the panels within three years. The 6' trees that will be planted will be 9-13.5' tall; the top height of the panels is only 7.5' tall, so almost from the beginning there will be complete screening of the panels. The buffer that will be planted would be 150' from the edge of the property to the panels on all sides; within that would be three rows of plantings only spaced 10' apart, which is a very robust planting. The other issue was proximity to potential future rail trail/tourism. In 2022, the Planning Commission and Town Council considered Phase 4 of the existing 4-phased solar facility and during the hearings, both Planning Commission and Town Council, the consultant mentioned that the rail trail project is important and that the applicant had agreed to plant trees along the railroad right of way, "if and when the proposed Rails to Trails project occurs." That is reasonable and that is what was fine one year ago, but what the Applicant is proposing is a more robust planting plan.

The Comprehensive Plan Vision Statement includes promoting environmental responsibility. Ms. Schweller stated that there are other goals in the Plan which this project is consistent with. The State of Virginia has decided that by 2050, 100% of the power provided by Dominion Energy and Appalachian Power be from renewable resources, and Shared Solar, like this project, is a primary way for the Commonwealth to achieve that goal. The project commits to erosion control and storm water management in accordance with DEQ regulations; these are very strict and the project must comply with local and state regulations. There will be no threat to groundwater or local rivers and streams and 40% of the parcel will remain open space. There are many environmental benefits to this project. There are no wetlands on the property, no environmentally sensitive locations within the property, no impact to wildlife, very minimal site disturbance. The property will be maintained, with less fertilizer and pesticide than regular agricultural activity. There will be pollinator friendly plantings. There is a full decommissioning plan to ensure that at the end of its life, it will be properly disposed of.

Ms. Schweller stated that another important Comprehensive Plan goal is to promote economic development. Unlike residential development, this project will have very minimal impact on roads, schools, public services, utility infrastructure. It will provide jobs during construction. It will increase the real estate revenue because this property will no longer be in land use; there will be roll back of the land use, deferral of real estate taxes, it will assessed as industrial fair market value. There will be a condition – the Applicant will also pay revenue share tax of \$7,000/yr. along with a condition of \$175,000 cash towards development of public services. The Applicant has also offered recreational land for use as a Town park as there was concern for the impact on potential recreational land. The Applicant doesn't believe there will be an impact, but has offered recreational land as well.

In summary of the Comprehensive Plan review, Ms. Schweller stated that Staff has identified two issues, first that the Future Land Use Map indicates the project location should be residential, but as shown, residential is

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not feasible; Staff has indicated that it would be near a potential future rail park, but the park is not certain, and any impact would be mitigated by substantial buffering. On the other hand, the Comprehensive Plan is just a snapshot in time; neighboring development has made the site undesirable for residential development. There will be no impact on recreational areas. This project supports economic goals, environmental goals, adds an additional recreational area, and funds to enhance the trail park.

Public Comments:

Alvin Henry, 15 Hawkins Road, stated that his property has been in his family since 1930. They helped build the road going down to Red Banks. His father has lived there; his uncle has lived there; he has lived there; his nephews are there now, so this has been their home approaching 100 years. Mr. Henry asked, "Who is Mt. Jackson Solar?" At the last meeting, a representative stated Dynamic Energy was an LLC that had been bought from someone in Massachusetts; they were an LLC and their funding/backing came from a Canadian pitch fund. Is that their bank or were they also bought by this Canadian pitch fund? There is a cloud, but when it comes down to it, an LLC is protection. The applicant is Mt. Jackson Solar; it is not Dynamic Energy, it is not their parent company, it is Mt. Jackson Solar. The reason entities do these LLCs like this is to limit their liability. The liability here today is Mt. Jackson Solar but we don't know what will happen in 25 years. Mr. Henry stated that he put copper on his house 25 years ago and noticed 5 years later that the rain water had created dead spots in the grass from the copper. Here you are going to have 20+ acres with glass, special metal made in China, etc.; we don't know what's going to happen there. The liability here is to Mt. Jackson Solar, so if it becomes a liability in value greater than the asset, what happens? Whoever is over this entity is going to disappear and there will be struggles for who is responsible for cleanup. There is talk about a bond being created today that will be good for 25-30 years; this is an interesting concept as well. Mr. Henry stated that he has been solicited for solar on his property. He has educated himself and has found out that these solar fields when built are allowed to have rapid depreciation, where everything is depreciated in a very quick time frame, like two years. The depreciation is so great, and the applicant touched on this, that when the property comes out of land use, it is still in Ag but the taxes on it are so nominal that they are giving you a \$7,000 payment each year to make it more palatable. This is not like a business or hotel; the tax revenue is very nominal.

When you consider that this is one of the most valuable properties in Mount Jackson in terms of future land uses – it's a level piece of land – Mr. Henry stated he takes objection to the fact that the industrial property next to it ruins it, because it really doesn't. His family travels Hawkins Road every day and look on both sides of the road. The industrial use doesn't spoil the residential potential; in fact, Hawkins Road is very high in elevation and blocks the majority of the view from this site of the facility. The applicant has made a lot statements about the screening they plan to do, also along the railroad and I-81. A couple things they didn't mention is that the railroad track is on an elevation about 10-12' above the ground elevation of this property, so the trees have to grow a long way before providing shielding from the view shed of the railroad. This is the same with I-81, which has an elevation higher than this property. There is no way they can shield the view shed of Hawkins Road, which in some places is 50-60'. At the last meeting, \$100,000 was mentioned and now tonight it has gone up to \$175,000. Mr. Henry stated that this is a bribe. If the property can't stand on its own merit, why are they trying to buy the influence of the council? This is not ethical. Mr. Henry stated that Staff did a terrific job. There was a presentation made on the Comprehensive Plan, the Planning Commission listened to it and made their decision based on the facts; Mr. Henry hoped the Council supports Staff and the Planning Commission.

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Mark & Donna Mashburn stated that their questions were answered.

Neil Showalter, Town Manager, stated that he felt it appropriate during the Public Comments portion of the Public Hearing to mention that today, about 1:30 PM, a petition was brought by the Town Office that appears to have 58 signatures on it. Staff did no verification of the signatures or the addresses shown, many of which are Mount Jackson, some are county or adjoining towns. Mr. Showalter stated that he believed it would be appropriate to at least enter the petition into public testimony. Mr. Showalter read from the petition, "We the undersigned do not support the solar field on Hawinstown Road. The field cannot be adequately screened from all sides. The use does not comply with the Comprehensive Plan. The solar use damages the view shed of the future Rails to Trails program. The use of this land would eliminate possibly the most desirable remaining parcel for future use in the Town of Mt. Jackson, and finally the use does not return any measurable tax revenue to the Town. Solar fields should be placed on the least desirable land. This is the result of Shenandoah County's year long effort to rewrite their ordinance." It has, as mentioned, about 58 signatures.

Applicant's Rebuttal

Ms. Schweller stated she would like to respond to a few comments and provide clarification. With regards to the LLC nature of the applicant, with regards to a special use permit and special use permit conditions, those do run with the land, so if this property were sold with special use permit approval before being sold, those responsibilities remain in place and the Town can enforce those. If the conditions are violated, the permit can be taken away. Of course there is a bond for the decommissioning plan and things run with the land, so there is always a way for the Town to enforce its approval. Regarding taxes, Ms. Schweller stated she mentioned \$7,000 a year. This is a way, basically, for the applicant to give the Town revenue share taxation without adopting a revenue share ordinance, which is \$1400/MW/year. This is not in lieu of real estate taxes or any other applicable taxes. This property is in land use taxation, which means it pays a very low rate. When brought out of land use taxation, once approved, it would be assessed presumably as industrial use, so taxes would be very different from what they are today. Finally, regarding the special use permit conditions, those are explicitly in anchor by Virginia law. One of the things when the Clean Economy Act was adopted in 2020, within the act, the General Assembly provided that cash and property value may be given by an applicant to the locality for public projects, things that are in the budget, things that need to be done. This is perfectly above board. It is in the statutes as one of the things the General Assembly adopted in order to incentivize localities to accept these types of projects, signing agreements, special use permit conditions, and also variations in the Substantial Accord. Ms. Schweller stated she wanted to make it clear this is not a bribe, this is something the General Assembly and the Governor asked for, and so they are using that tool.

Councilwoman Bonnie Good inquired if it is the State who requires \$7,000 to be given to the location; it would not be coming from the applicant's heart, but mandated by the State. Ms. Schweller stated that it is not mandated, but the State enables the locality to adopt an ordinance to require it. If a locality doesn't adopt an ordinance to require revenue sharing, it is not payable. So, it is not a mandatory tax; it is something the locality may adopt and this applicant decided to go ahead and offer it as a condition without the Town having to adopt the ordinance.

Staff's Rebuttal

Mr. Moore stated that property owners can do what they want with their property; this is a fundamental thing we all support and believe in. In no way is anyone trying to say what you have to do. Future land use is a probability, not a demand. The property can stay agriculture for the next 100 years, but if someone comes

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along to pay the right price to purchase the land, that individual will probably continue to farm it, but more than likely might want to get a higher and best use, which is a fundamental principle – highest and best use. Farmers do this everyday; do I want to grow cotton, cabbage, what do I want to grow that will give me the most value for the land? Mr. Moore spoke of a housing project in Middletown that is within 75' of I-81. People are buying houses within proximity of major employers. The trend is smaller yards, so this property could easily be used for housing. There is another system in the Zoning Ordinance for traditional development and commercial developing, which is the use of land for both commercial and housing. The young professional is looking for recreational activities. When you look at the Town's Comprehensive Plan, there are planned and proposed transportation improvements. In closing, there are public concerns, the Town is environmentally sensitive, as shown in the Zoning Ordinance, which the Town has followed and provided for. The area being discussed for future recreation proposal is in Shenandoah County, it is not even in the town, and is in a floodway.

Mayor Pifer closed the Public Hearing at 7:57 PM.

Regular Meeting

Mayor Pifer called the regular meeting of the Mount Jackson Town Council to order at 7:57 PM in the council chambers at 5901 Main Street. Roll call was taken with Councilmembers Rod Shepherd, Judy Fultz, Evelyn Burner, Bonnie Good, Todd Holtzman and Brandi Freed in attendance. Also, in attendance, Neil Showalter, Town Manager; Erick Moore, Planning and Development Director; Jay Neal, Town Attorney; Mario Rosso, Finance Director; Keith Cowart, Police Chief; and Barbara Riggelman, Town Clerk. David Moore with Cornerstone was present to provide Zoom service. Attending via Zoom were Darla Orr and David Luddy. Visitors included Lori Schweller, land use attorney with Williams Mullen; Derek Sheehan, Director, Community Solar Business Development with Dynamic Energy; Todd Bowman; Brenda Foley; Dennis & Judi Wakeman; Alvin Henry; Colton Henry; Joe Hoffman; Dan & Bonnie Bowman; Mark & Donna Mashburn; Jerry & Mary Franklin; Whitney Franklin; Pamela Sperry; and Charles Middleton.

Agenda Additions/Deletions/Changes: None

Hear from Visitors: None

Opening Remarks From Mayor: Mayor Pifer thank everyone who was present today.

Presentations: None

Chief of Police Report: Chief Cowart reported for the month of March, there were 1,061 calls for service; year to date total being 2,722. There were 4 arrests for drunk in public, 2 DUI arrests, a report of unauthorized use of vehicle, 1 report of a rape that was unfounded, and a shoplifting case that is still ongoing. In notes of interest, there are 2 part-time officers that have been brought on board and are in their initial phases of indoctrination. One is a Broadway PD officer with 12 years in law enforcement, military veteran; the other is from Rockingham County SO with 5 years as a patrol officer, a Stonewall Jackson High School graduate and is a military veteran as well. The PD has installed a prescription drug drop box at the Mount Jackson Drug Store, a collective effort with Family Youth Initiative (FYI), Northwestern Community Service Board, and Northwestern Prevention Collaborative. The Drug Enforcement Administration (DEA) is hosting its 24th National Take-Back Initiative on Saturday, April 22, 2023 from 10 AM to 2 PM, at the PD and the Drug Store.

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Town Manager Report: Mr. Showalter reported that at the last Council meeting, there was a presentation from Virginia Regional Transit Authority for ShenGo. As a follow up to the interest that was expressed after the presentation, Mr. Showalter met with Mr. Thompson, Transit Manager of VRTA, last Wednesday and the share of expense that Mount Jackson would be asked for full participation in the routing and management control of the bus service would be \$10,000. The amount is currently noted in the Contingency line item in the General Fund expenditures that will be presented later tonight. Mr. Thompson indicated that with this support, the town could expect more stops in town and more voice in the operation. Mr. Thompson also wanted to pass along that this service has been operating under a demonstration/startup-type grant; they have adequately satisfied the State, which had been a going concern, and their funding will switch to a more regular transportation assistance grant/funding with VRTA the Grantee. Mr. Showalter stated that he will have a more formal presentation to present to Council later on. The sidewalks continue to be constructed; another significant pour was made today just north of the post office. Later this week, hopefully on Thursday, the first of two cuts across Route 11 will be made in order for Foltz to install the VDOT-requested culvert pipe replacements. There may be some traffic disruptions. Employee recruitment efforts continue. We currently have three full-time openings on staff - one for a police department patrolman, a water/wastewater treatment plant operator trainee, and a general public works employee. The staffing for the pool is going well. We have a Pool Manager and 8-9 lifeguards already, but would like a handful more, so if you have family or friends who would like a job, please have them contact the Town Office. The Wastewater EQ project preconstruction meeting with the contractor, Patterson Construction, will be April 25. Patterson will start work shortly after that meeting. Mr. Showalter and Mr. Rosso have been working with the USDA and bond attorney Daniel Lauro and there will be two public hearings needed for the bonds and notes required for financing, which will be explained later tonight. Mr. Showalter stated that he has contacted the two councilmembers who this would effect, but also for any person in the public who may be interested in being a candidate - candidates for the Special Town Election to be held on November 7, for the one-year completion of the two council terms, must submit their written statements of qualifications and economic interests to the General Registrar, Lisa McDonald, by June 20, which is only 2 months away.

Committee Reports:

1. Finance Committee Chairperson, Rod Shepherd stated that he will speak under New Business.
2. Ordinance Committee Chairperson, Evelyn Burner had no report.
3. Personnel Committee Chairperson, Todd Holtzman had no report.
4. Public Safety Committee Chairperson, Judy Fultz had no report.
5. Public Services Committee Chairperson Bonnie Good had no report.
6. Public Properties Committee Chairperson Brandi Freed had no report.

Consent Agenda: Approval – Minutes of March 14, 2023 Regular Meeting.

Councilmember Burner MOVED, seconded by Councilmember Fultz to APPROVE the Consent Agenda items above.

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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			
6 AYES, motion carried			

Old Business: None

New Business:

1. SU-23-01: May May’s Day Care & Preschool, LLC Special Use Permit – Introduction and Set for Public Hearing

Mr. Moore stated that the subject property is located at 5250 & 5252 Main Street. Previous use was as an office, general use; existing structure is 1,755 sq. ft. of finished space; and the subject parcel is on 0.469 acre. To the north of the subject property is the post office, to the west are single-family dwellings, to the south is a commercial tree service, and to the east is a single-family subdivision. Mr. Moore showed photos of the subject property. The Zoning District Statement of Intent for the Highway (B-2) Business: Accommodate general business areas; highway-oriented commercial, fast-food, wholesale, and similar uses; greater volume of traffic; uses not within centralized shopping area (B-3), recognizes demand for a variety of uses; and ensure site compatible with small-town character, charm, and history. 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; promote appropriate and economic development south of town; enhance employment opportunities; and encourage efficient use of land to enhance property values and tax base. Mr. Moore showed the subject property on the Mount Jackson Zoning Map and Future Land Use Map.

Councilmember Fultz MOVED, seconded by Councilmember Burner to SET a Joint Public Hearing on May 1, 2023 for SU-23-01: May May’s Day Care & Preschool, LLC Special Use Permit.

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			
6 AYES, motion carried			

2. SA-22-02: Mt. Jackson Solar, LLC Substantial Accord Determination – Eligible for Action

Councilmember Holtzman MOVED, seconded by Councilmember Good to AFFIRM the Planning Commission’s Determination on March 6, 2023 that SA-22-02 is Not in Substantial Accord with the Town’s Comprehensive Plan for the Reasons Outlined in the Staff Report.

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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 NAY, motion carried

3. SU-22-04: Mt. Jackson Solar, LLC Special Use Permit – Eligible for Action

Ms. Schweller stated that she did not realize they were invited to give both presentations during the Public Hearing, so she had only given the Substantial Accord Presentation for the Applicant.

Mayor Pifer reopened the Public Hearing in order that the Applicant could give their Special Use Presentation.

Ms. Schweller stated that Staff recommended denial because according to the Staff report, it is inconsistent with the Comprehensive Plan, which has already been discussed. In the Zoning Ordinance for solar facilities, it provides that it should not be near recreational areas. The Applicant’s response to that is that it is not near any recreational area and that a future recreational area is speculative. The third reason for Staff recommendation of denial is even if a temporary use, it would detract from small-town character and scenic charm. Based on the screening they have shown, that would not be the case. The special use criteria have been outlined already, and the Applicant feels the proposal will not adversely affect health and safety of the residents, will not be detrimental to public welfare, will not conflict with the Comprehensive Plan, and does not require any services as the services are adequate. Ms. Schweller stated that there was a long presentation by the Applicant at the last hearing about health and safety, a lot of information on photovoltaic technology, and she would not go over this again, but it is in the record. In terms of public welfare, the special use permit will have 36 conditions attached to it, particularly on the landscape buffer. Again, the boundaries of the property and the closest panels will be 150’ on all sides. All existing vegetation would remain and there will be 3 rows of plantings, trees 10’ apart, 6’ tall at the time of planting. There is a maintenance schedule to ensure they will be healthy and dead trees would be replaced. There will be 10’ between them, side to side and front to back, which is a very robust planting schedule and maintenance schedule. The view from Hawkins Road would be mitigated very quickly, the property is relatively flat and the panels are only 7.5’ tall.

In terms of public welfare and benefit, the first thing the Applicant would like to point out is \$100,000 from the Applicant for public improvements, which could be contributed to the Shenandoah Rail Trail or other recreational areas, including the riverfront property which was offered, and related amenities to the trail, such as parking, signage, or other facilities. After the project has been in operation for 20 years, the landowner himself would be offering an additional \$25,000 upon each 5-year extension of the lease (\$75,000 total). Also for public welfare and benefit, the Applicant has offered, thru the landowner, almost 20 acres of riverfront property for a recreational greenway for fishing, tubing, boating, canoeing, and general enjoyment of the public. This would be done through a no-rent lease at the conclusion and would be granted to the town, or the county if directed. The analysis of the special use permit criteria set out in the Zoning Ordinance has been discussed – it is consistent with the Comprehensive Plan, fully meets all requirements of the Solar Facilities Zoning Ordinance, the Applicant has agreed to over 35 conditions to mitigate any potential impact, it will not adversely affect the health, safety, or public welfare. The Future Land Use Map has been discussed. The Comprehensive Plan is not law like the Zoning Ordinance. Neighboring industrial use makes future residential

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development untenable on the subject property. It was also discussed how conditions and landscaping would mitigate any perceived impacts. The second recommendation from Staff is that it would be near a recreational area. There is no recreational area at this time. The Comprehensive Plan states that the Town should develop this project as a way to attract tourism. There is no clear delineation or designation at this time, nor easements for this project, so it is a speculative ground for denial.

Mayor Pifer stated that he was sorry that Ms. Schweller didn't understand, but in his announcement to start the public hearing, he did say and he repeated, "the Council had two items on the agenda and would entertain Staff's presentation, the Applicant's presentation, and any speakers on both items during the public hearing." Ms. Schweller stated it was her mistake and thanked Council.

Mayor Pifer returned to the Regular Meeting.

Councilmember Holtzman MOVED, seconded by Councilmember Good to DENY Special Use Permit SU-22-04.

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 NAY, motion carried

4. Proposal to Trim Vegetation Along Railroad Right-of-Way

Mr. Showalter reported that this has been a several months effort to get the railroad, Norfolk Southern, to grant the Town permission to trim the growth in certain areas between the rails. A description of the work to be done is included in the vendor's quote from Larry Wilt. While he did put a deadline on the quote, he told Mr. Showalter on the phone that this past week that he would continue to honor the quote. Mr. Showalter stated that in pursuing thru the bureaucracy of Norfolk Southern, he is to the point where \$1,500 (or \$3,000 if expedited service is desired) is needed in consideration of a "Right of Way Entry Permit". Mr. Showalter asked for Council's direction. Mr. Holtzman inquired if the Town currently has any permission from the railroad to maintain all of the area currently mowed behind Town Hall on the right of way. Mr. Showalter answered that there is none that he is aware of, and nothing written that he is aware of.

Mr. Holtzman stated that he did ask for this proposal, and upon being reinstated on Council, he wanted to help get the railroad trimmed down and cleaned to improve the appearance for all the citizens of the town and to help preserve the rail corridor for whatever its future use may be. Mr. Holtzman stated that the railroad is very difficult to work with, as we have seen, and if they were a good neighbor and steward of the property they owned, they would take care of it. Mr. Holtzman stated that when the railroad took up the railroad crossings at Mount Jackson Road, they left all the railroad ties stacked upright beside the railroad, between the railroad and the highway, on the property adjacent to Sheetz, the vacant property; a mountain of railroad ties. Mr. Holtzman stated that his family owns this parcel, and he believes the railroad ties were stacked on the right of way, which they have the right to do. He asked if they could potentially clean them up. The Town said that they didn't feel comfortable doing that, so they reached out again, with no luck, to the railroad. Mr. Holtzman wanted to mention that the Town shouldn't fear the railroad, as we are doing a good, neighborly

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thing in helping them take care of the property when they will not. Mr. Holtzman stated that he believes the Town has the same sovereign immunity as a municipality that they would have as the railroad. Ultimately, Mr. Holtzman got a dump truck and loaded up all the railroad ties and hauled them away and the only regret he has is that he didn't drive the dump truck down to their headquarters and dump them on the street in front of their main entrance so they could see how it feels to mess up the entrance to our town and not clean up after themselves. Mr. Holtzman stated that this is a bargain amount to do some general maintenance on 3 acres, and pointed out that the Town has been mowing and trimming the parcel for many years, not only behind Town Hall but continuing all the way down behind the Mayor's Park, almost to the ABC Store, without any issues. This would not devalue the property, it would only be a slight aesthetic improvement.

Ms. Good stated that in reading the proposal, what will be taken down will just be thrown to the side; it says they are not removing anything. The trees will still be on the property, just deteriorating. Ms. Good inquired if this would be an on-going recommendation. Mr. Holtzman stated that it would not. Ms. Good stated that she can not see the purpose in doing this. It could encourage people to be on the railroad tracks, walking, etc. because they are cleaned up, but people have no right to be on the tracks at this point in time, so they would be trespassing. Ms. Good stated this would be a problem to her; perhaps no one from the railroad would come down here and see people trespassing. It may be nice, but the recommendation is to have 3 miles of railroad be done, to what benefit? Maybe the part in Town proper that is affected and can be seen, but the rest Ms. Good stated that she could not see the benefit in doing. It will continue to grow up unless treated in a way to prevent regrowth. Ms. Good stated that it isn't a large cost, but nothing is being taken away. Eventually what is left behind would need to be removed, which could form a worse situation than leaving the railroad as it is now, and when we get to the point for Rails Trails, they would have the proper equipment and people to do this without getting a permit or approval. Ms. Good pointed out that the required fee does not guarantee approval and could be money down the drain. Ms. Burner stated that if she owned property by the railroad, she would want it cleaned up because it looks trashy. Ms. Good stated that they will not be carting anything off, it will all be left there. Ms. Burner stated that if they cut down the brush, it will grow back in time but in the meantime, she feels like Council owes it to the town residents who don't want to have that mess in their back yard. Ms. Good agreed if something were done along the area that is in town but not the 3 miles. Mr. Holtzman stated that the whole thing is in town. Ms. Burner reiterated that for people with property adjacent, it looks terrible and this would speak of Mount Jackson and what we take care of. Mr. Shepherd stated that it is easier to beg forgiveness than ask permission. If the Town can keep the area behind Town Hall as nice as it was last year, we should keep on doing that, and he would make a motion to table this until the May Council meeting to see if someone from the railroad would come through as they had said they would, and if it hasn't been done by the May Council meeting, to revisit this. Mr. Holtzman stated that he didn't think they had said they would clean it up. Mr. Shepherd stated that Staff had mentioned something about they would come through and do some cleaning and spraying. Mayor Pifer stated that he believed it was slated for spraying. Mr. Showalter stated that he had a conversation in late January/early February with one of the employees in Page County, who wanted the Town to know that this section of track is slated for herbicidal spraying this spring, which may address some of the growth. Mr. Holtzman stated that there was a test case that the vendor did, and if you drive Mount Jackson Road and look to the right where the medial facility and Liberty Truck Stop are located, you can see the appearance where they did 50-75 yards and it looks very nice. They did quote only a 6' wide section but it is enough to go across the tracks. Mr. Holtzman stated he believed that nothing will happen and the railroad will respond that that it is overgrown and their vehicle can no longer cross and spray herbicide, and if they do spray herbicide, this would not address Councilwoman Good's concern about removal because it would still be standing, dead and brown. If you clear the 6' path, the excuse will not be that

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they can't traverse the path and spray herbicide where it belongs. That is what they did for years and is the reason why it was always so clean, because they came through periodically and sprayed. Mr. Holtzman stated that he owns quite a few properties along the railroad and they are very unsightly, and he feels people would appreciate the Town doing this.

Councilmember Holtzman MOVED, seconded by Councilmember Freed to ACCEPT the Proposal to Trim Vegetation Along the Railroad Right-of-Way.

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		

4 AYES, 2 NAYS, motion carried

5. Ordinance O-01-2023 – Adopting Budgets for the General Fund, Utilities Funds, Capital Projects, and Equipment Replacement Funds; Establishing Real and Personal Tax Rates, Establishing Compensation Amounts/Rates, Setting Fees for Water, Sewer, Refuse Services, Auto License Tax, and Other Fees, Charges, Penalties, and Taxes, and Establishing Annual and Specific Appropriations for Fiscal Year 2024.
- a. Introduction/Set for Public Hearing – May 9, 2023 at 7:00 PM
 - b. Schedule Special Council Meeting – Budget Work Session – May 9, 2023 at 6:00 PM

Mr. Shepherd complimented Town Staff. Often at this time of year, Council has a budget adjustment discussion but there is no need to make any budget adjustments. Ordinance O-01-2023 is the budget for the coming fiscal year. Mr. Shepherd stated that he would like to introduce this budget and set a public hearing for the Council Meeting on May 9 and set a Council Budget Work Session, also on May 9 at 6:00 PM, prior to the regular council meeting. This will give everyone 5 weeks to review the budget proposals, be prepared to ask questions, and have Staff give a full explanation at the May council meeting.

Councilmember Shepherd MOVED, seconded by Councilmember Fultz to SET a Public Hearing for Ordinance O-01-2023 on May 9, 2023 at 7:00 PM and Schedule a Special Council Meeting Budget Work Session on May 9, 2023 at 6:00 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			

6 AYES, motion carried

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6. USDA Bond Resolution – Set for Public Hearing – May 9, 2023 at 7:00 PM

Mr. Showalter stated that he mentioned earlier in the meeting that Staff is working on the construction side and the finance side of EQ Basin Project. Staff is working with bond counsel to formalize financing and Mr. Showalter stated that it is his understanding that when a town like ours wishes to issue a debt of this size, the State of Virginia Public Finance Act requires that a locality hold a public hearing prior to the final issuance of the bond. In this case, there are two very similar public hearing announcements because USDA is no longer in the business of construction loans; they want a finished project, with all costs included, rolled into one check they write to clear with an interim lender. So, there is a bond approval the Town needs to make with the USDA for the long bond, but we also need short term financing. In order to sign the note, public comment is needed on the issuance of that note, since it would be a debt of the people. The two go together, but in order to keep the bookkeeping straight, Mr. Showalter stated the need to have two separate votes. Mr. Showalter stated that there was no information on the resolution in the council packet because Mr. Lauro has not gotten everything together that would go into the appropriate resolution. This will be available at the May meeting and information given to Council before the public hearing.

Councilmember Shepherd MOVED, seconded by Councilmember Burner to SET a Public Hearing on May 9, 2023 at 7:00 PM for the USDA Bond Resolution.

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			
6 AYES, motion carried			

7. Interim Financing Loan/Note – Set for Public Hearing – May 9, 2023 at 7:00 PM

Councilmember Shepherd MOVED, seconded by Councilmember Fultz to SET a Public Hearing on May 9, 2023 for the Interim Financing Loan/Note.

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			
6 AYES, motion carried			

Closing Remarks by Council Members, Mayor: Mayor Pifer gave a reminder for the Hometown Partnership Meeting on Thursday, April 13, 2023 at 10:00 AM at the Town Hall. Ms. Wakeman stated that May 6, 2023 will be the Big Band Bash. The Partnership is moving right along with vendors. The Memorial Day Event will be held at the Union Church. Ross Poplar will be the speaker; the Shenandoah Singers will be presenting patriotic music; there will be a bagpipe player; and a someone to play TAPS. SEARCH will be furnishing a meal at Mt.

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Calvary Lutheran Church Social Hall following the ceremony with a free-will donation. The Memorial Day Event will be on May 29, 2023 at 5:00 PM. There are some other things coming up that the Partnership is anxious to share with Council. Mayor Pifer thanked the Partnership for being present.

Motion made by Councilmember Good, seconded by Councilmember Shepherd, to adjourn the meeting at 8:40 PM.

Barbara Riggelman, Clerk

Donald "Donnie" I. Pifer, Mayor