



**BOARD OF SUPERVISORS
SPECIAL MEETING – PUBLIC HEARING
Agenda – April 17, 2023
7:00 P.M.**

- 1) Invocation
- 2) Pledge of Allegiance
- 3) Call to Order
- 4) Welcome of Visitors and Advise Role of County Administrator as Contact Person for the Board
- 5) Public Hearing - Fiscal Year 2023-24 Proposed School Board Budget
- 6) Public hearing – Fiscal year 2023-24 Proposed Total County Budget
- 7) Public Hearing – Proposed Siting Agreement -Axton Solar, LLC
- 8) Adjournment

BOARD OF SUPERVISORS' MEETING

Meeting Date: April 17, 2023

Agenda Item # 5

Subject:

Public Hearing – Fiscal Year 2023-24 Proposed School Board Budget

Background:

Public Hearing to be held pursuant to section 15.2-2506 of the Code of Virginia to receive citizen comments regarding the contemplated Fiscal Year 2023-24 Henry County School Board budget.

Attachments:

Public Hearing Advertisement

Recommendations:

None

Possible Board Action(s):

None

PUBLIC HEARING NOTICE - COUNTY OF HENRY, VA
FY 2023-24 SCHOOL BOARD BUDGET, TOTAL COUNTY BUDGET AND TAX LEVIES

Pursuant to Section 15.2-2506 of the Code of Virginia, a public hearing will be held on April 17, 2023 at 7:00 P.M. in the Summerlin Boardroom of the Henry County Administration Building, 3300 King's Mountain Rd, Collinsville, VA, to RECEIVE CITIZEN COMMENTS REGARDING THE CONTEMPLATED SCHOOL BOARD BUDGET AND THE TOTAL COUNTY BUDGET COLLECTIVELY TOTALING \$196,623,925, INCLUDING THE SETTING OF A REAL ESTATE TAX RATE OF NOT MORE THAN \$.555 PER \$100 ASSESSED VALUATION, SETTING A PERSONAL PROPERTY TAX RATE OF NOT MORE THAN \$1.55 PER \$100 ASSESSED VALUATION, and SETTING MACHINERY AND TOOLS TAX RATE OF NOT MORE \$1.55 PER \$100 ASSESSED VALUATION. Citizens may view the Proposed FY 2023-24 Budget on the County's website at www.henrycountyva.gov or the Henry County Administration building. The Board of Supervisors may consider any public input received prior to taking final action on the budget.

BOARD OF SUPERVISORS' MEETING

Meeting Date: April 17, 2023

Agenda Item # 6

Subject:

Public Hearing – Fiscal Year 2023-24 Proposed Total County Budget

Background:

Public Hearing to be held pursuant to section 15.2-2506 of the Code of Virginia to receive citizen comments regarding the contemplated total County budget collectively totaling \$196,623,925, including setting a real estate tax rate of not more than \$.555 per \$100 assessed valuation, setting a personal property tax rate of not more than \$1.55 per \$100 assessed valuation, and setting machinery and tools tax rate of not more than \$1.55 per \$100 assessed valuation.

Attachments:

Public Hearing Advertisement

Recommendations:

None

Possible Board Action(s):

None

PUBLIC HEARING NOTICE - COUNTY OF HENRY, VA
FY 2023-24 SCHOOL BOARD BUDGET, TOTAL COUNTY BUDGET AND TAX LEVIES

Pursuant to Section 15.2-2506 of the Code of Virginia, a public hearing will be held on April 17, 2023 at 7:00 P.M. in the Summerlin Boardroom of the Henry County Administration Building, 3300 King's Mountain Rd, Collinsville, VA, to RECEIVE CITIZEN COMMENTS REGARDING THE CONTEMPLATED SCHOOL BOARD BUDGET AND THE TOTAL COUNTY BUDGET COLLECTIVELY TOTALING \$196,623,925, INCLUDING THE SETTING OF A REAL ESTATE TAX RATE OF NOT MORE THAN \$.555 PER \$100 ASSESSED VALUATION, SETTING A PERSONAL PROPERTY TAX RATE OF NOT MORE THAN \$1.55 PER \$100 ASSESSED VALUATION, and SETTING MACHINERY AND TOOLS TAX RATE OF NOT MORE \$1.55 PER \$100 ASSESSED VALUATION. Citizens may view the Proposed FY 2023-24 Budget on the County's website at www.henrycountyva.gov or the Henry County Administration building. The Board of Supervisors may consider any public input received prior to taking final action on the budget.

BOARD OF SUPERVISORS' MEETING

Meeting Date: April 17, 2023

Agenda Item # 7

Subject:

Public Hearing – Proposed Siting Agreement - Axton Solar, LLC

Background:

Public Hearing to be held pursuant to section 15.2-2316.8 of the Code of Virginia to receive citizen comments on a proposed Siting Agreement between Henry County and Axton Solar, LLC.

Attachments:

Public Hearing Advertisement
Draft Siting Agreement

Recommendations:

None

Possible Board Action(s):

None

**HENRY COUNTY BOARD OF SUPERVISORS
PUBLIC HEARING NOTICE**

Pursuant to Section 15.2-2316.8 of the Code of Virginia, the Henry County Board of Supervisors will hold a public hearing on Monday, April 17, 2023 at 7:00 p.m., or as soon thereafter as can be heard, in the Summerlin Meeting Room on the first floor of the Henry County Administration Building at 3300 Kings Mountain Road in Collinsville, Virginia.

The purpose of the public hearing is to receive citizen input on a proposed Siting Agreement between Henry County and Axton Solar, LLC.

A copy of the full text of the proposed Siting Agreement may be viewed in the Office of the County Administrator in the County Administration Building on Kings Mountain Road, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Dale Wagoner
County Administrator

SITING AGREEMENT

This **SITING AGREEMENT** (together with all attachments appended hereto, this “Agreement”) dated as of April ____, 2023 (the “Effective Date”) is made by and between **AXTON SOLAR LLC**, a Delaware limited liability company (“Developer”), and **HENRY COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the “Locality”). Developer and the Locality may each be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, Developer intends to develop, install, build, and operate a ground-mounted solarphotovoltaic electric generating facility (“Project”) on certain parcel(s) of land in Henry County as identified in Attachment A (collectively, the “Property”);

WHEREAS, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia titled “Siting of Solar Energy Facilities”, Developer and the Locality may enter into a siting agreement for solar facilities (“Siting Agreement”);

WHEREAS, pursuant to Virginia Code § 15.2-2316.6, the Project is eligible for a Siting Agreement;

WHEREAS, after negotiation between the Locality and Developer, the Parties desire to enter into this Agreement to mitigate certain potential impacts of the Project;

WHEREAS, Developer has agreed to the payments and financial terms contained herein; and

WHEREAS, pursuant to the requirement in Virginia Code § 15.2-2316.8 (B), the Locality held a public hearing in accordance with subdivision A of Virginia Code § 15.2-2204 for the purpose of considering this Agreement, after which a majority of a quorum of the members of the Henry County Board of Supervisors (the “Board”) approved this Agreement.

NOW, THEREFORE, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia, intending to be legally bound hereby and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Locality and Developer do hereby agree as follows:

Article I

Special Use Permit; Commercial Operation

1. **Special Use Permit.** The construction and operation of the Project shall require the approval of a Special Use Permit (“SUP”) approved by the Board of Zoning Appeals (“BZA”). The Project shall be constructed and operated in accordance with all licenses, approvals, and

permits, including, but not limited to, the SUP.

2. **Commercial Operation Date.** For purposes of this Agreement, the “Commercial Operation Date” is the earlier of: (i) ninety (90) days following delivery of commercial energy to transmission system (as communicated and verified by the transmission system owner within ten (10) days following first delivery of energy, which shall not include any energy delivered during commissioning or testing) or (ii) the commercial operation date as established in the PJM Interconnection Services Agreement.

3. **No Obligation to Develop; Contingent Obligations.** Developer has no obligation to develop the Project. It is understood that development of the Project is contingent upon a number of factors, including, but not limited to, BZA approval of the SUP, regulatory approvals, availability and cost of equipment, financing, and demand for renewable energy and renewable energy credits. Any election by Developer to terminate, defer, suspend, or modify plans to develop the Project shall not be deemed a default of Developer under this Agreement.

Article II Decommissioning

1. **Decommissioning.** Developer shall Decommission the Project in accordance with the SUP, the Decommissioning Plan and all requirements of the Locality’s ordinances.

Article III Payments

1. **Payment.** Developer shall make the following supplemental payments (each a “Payment” and collectively the “Payments”) in accordance with the following schedule:

- a. \$250,000 to be paid within sixty (60) days after the Effective Date of this Agreement;
- b. \$1,000,000 to be paid within sixty (60) days after the Locality’s approval of the site plan and issuance of the final building permit for the Project (“Building Permit Payment”);
- c. \$25,000 multiplied by the (i) final MWac installed in Henry County, Virginia and (ii) less the Building Permit Payment to be paid within sixty (60) days after the Commercial Operation Date.

2. **Taxes.** Any of the Payments made pursuant to Section 1 of this Article shall be separate and distinct from any amounts owed on personal property and equipment and all real estate taxes owed pursuant to applicable laws and the Henry County Code that are validly applicable to the Project or the Property.

3. **Statutory Structure of Payments; Statement of Benefit.** Developer agrees that by entering into this Agreement, pursuant to Virginia Code § 15.2-2316.6 et seq., the Payments are authorized by statute and acknowledges it is bound by law to make the Payments in accordance with this Agreement. The Parties acknowledge that this Agreement is fair and mutually beneficial to them both. The Parties agree that the funding provided pursuant to this Agreement is beneficial in that it will result in mutually acceptable, steady, predictable, accurate and reasonable payments to the Locality. Developer acknowledges that this Agreement is beneficial to Developer in allowing it to proceed with the installation of the Project with clear project design terms, which provide for mitigation of effects on the surrounding properties and the community.

4. **Use of Payments.** The Payments are intended to be used, at the Locality’s sole discretion, to (i) mitigate any impacts of the Project; (ii) to address capital needs set out in the (a) current fiscal budget of the Locality or (b) fiscal fund balance policy adopted by the Locality; or (iii) the deployment of broadband, as defined in Virginia Code § 56-585.1:9, in the Locality.

5. **Solar Revenue Share.** The Locality has not adopted an ordinance pursuant to Virginia Code § 58.1-2636 for the assessment of the maximum permissible revenue share per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the facility based on submissions by the facility owner to the interconnecting utility, on any solar photovoltaic (electric energy) project. Unless Developer expressly agrees in writing, the Project shall not be subject to any such ordinance if adopted after the Effective Date.

Article IV Comprehensive Plan

1. **Conformance with Comprehensive Plan.** Upon approval of this Agreement by the Locality and in accordance with Virginia Code § 15.2-2316.9, the Project and all associated transmission facilities shall be deemed to be “substantially in accord” with the Henry County, Virginia “Comprehensive Plan 1995-2010” in all respects. The Parties acknowledge that no further finding shall be required by the Locality's Planning Commission pursuant to Virginia Code § 15.2-2232(A).

Article V
Miscellaneous Terms

1. **Waiver of Density Limitation.** Recognizing the unique location of the proposed project site and the close proximity to the Locality’s eastern border and notwithstanding any provision in the Locality’s Zoning Ordinance and the terms of the SUP, the Board agrees that the Developer’s final approved site plan may include up to 435 acres of solar panels and associated equipment as calculated under Chapter 21, Article XVII, Section 21-1806.

2. **Binding Effect.** In accordance with Virginia Code § 15.2-2316.8(A)(3), and acknowledged and agreed to by the Parties, this Agreement shall be binding upon the Locality and enforceable against the Board and future governing bodies of the Locality in any court of competent jurisdiction.

3. **Conditional Obligation.** This Agreement is expressly conditioned upon the Locality's approval of a SUP authorizing the use of the Property as a utility-scale solar facility, subject to the conditions associated with the SUP. Should the Locality fail to approve a SUP on terms acceptable to Developer, and Developer elects not to proceed with the construction of the Project, then this Agreement shall be null and void and of no effect, at Developer's election.

4. **Cooperation.** Developer covenants to the Locality that it will pay the Locality the amounts due hereunder when due in accordance with the terms of this Agreement, and, in the absence of a breach or default by Locality of its obligations hereunder, will not seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement. So long as Developer is not in breach of this Agreement during its term, the Locality covenants to the Developer that it will not seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement.

5. **Removal of Property.** The Locality acknowledges that the final design of the Project will occur at a later date. Based on the final design, Developer shall have the right to remove parcels from the Project without the consent of the Locality. Property that is not included in the Project will be considered withdrawn from this Agreement without the need for further action by the Parties. The withdrawal of any parcels from this Agreement shall not affect the Developer’s obligations under this Agreement.

6. **Term.** This Agreement shall commence on the Effective Date and shall continue until the date when the decommissioning of the Project has been completed (the “Termination Date”). Developer shall have no obligation to make payments after the Termination Date. The termination of this Agreement shall not limit Developer’s legal obligation to pay local taxes in accordance with applicable law at such time and for such period as the Project remains in operation.

7. **Successors and Assigns.** This Agreement shall be binding upon the successors and assigns of Developer, and the obligations created hereunder shall be covenants running with the Property upon which the Project is developed. If Developer assigns all or substantially all of its interest in the Project, this Agreement will automatically be assumed by and be binding on the assignee. Upon such assignment and assumption, Developer shall be relieved of all obligations and liabilities under this Agreement accruing from and after the date of such assignment, and the assignee shall automatically become responsible under this Agreement. Developer shall execute such documentation as reasonably requested by the Locality to memorialize the assignment and assumption by the purchaser or transferee.

8. **Memorandum of Agreement.** A memorandum of this Agreement, in a form acceptable to the Parties, shall be recorded in the land records of the Clerk's Office of the Circuit Court of the County of Henry, Virginia. Such recordation shall be at Developer's sole cost and expense and shall occur as soon as reasonably practicable after the full execution of this Agreement. If Developer chooses to not develop the Project, in its sole discretion, the Locality shall execute a release of the memorandum filed in the aforementioned Clerk's Office.

9. **Notices.** Except as otherwise provided herein, all notices required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, by recognized overnight courier, or by commercial messenger to:

If to Locality:

Henry County
P.O. Box 7
Collinsville, VA 24078
Attn: County Administrator

With a copy to:

George Lyle, County Attorney
P.O. Box 7
Collinsville, Virginia 24078

If to Developer:

Axton Solar LLC
c/o Vesper Energy Development LLC
125 E John W Carpenter Fwy, Suite 525
Irving, Texas 75062
Attn: Trey Lopez, Development Manager

With a copy to:

Gentry Locke
10 Franklin Road, Suite 900
Roanoke, Virginia 24011
Attn: Jon Puvak, Esq.

The Locality and Developer, by notice given hereunder, may designate any further or different persons or addresses to which subsequent notices shall be sent.

10. **Governing Law; Jurisdiction; Venue.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO ANY OF ITS PRINCIPLES OF CONFLICTS OF LAWS OR OTHER LAWS WHICH WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. THE PARTIES HERETO (A) AGREE THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING, AS BETWEEN THE PARTIES HERETO, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT AND TRIED ONLY IN THE CIRCUIT COURT OF HENRY COUNTY, VIRGINIA, (B) CONSENT TO THE JURISDICTION OF SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, AND (C) WAIVE ANY OBJECTION WHICH ANY OF THEM MAY HAVE TO THE LAYING OF VENUE OR ANY SUCH SUIT, ACTION, OR PROCEEDING IN SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION, OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION, OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

11. **Confidentiality;** This Agreement, once placed on the docket for consideration by the Board, is a public document, subject to production under the Virginia Freedom of Information Act (“FOIA”). The Locality understands and acknowledges Developer, and as applicable, its associates, contractors, partners and affiliates utilize confidential and proprietary “state-of-the-art” information and data in their operations (“Confidential Information”), and that disclosure of any information, including, but not limited to, disclosures of technical, financial or other information concerning Developer or any affiliated entity could result in substantial harm to them and could thereby have a significant detrimental impact on their employees and also upon the Locality. The Locality acknowledges that during the development of this Agreement, certain Confidential Information may be shared with the Locality by Developer. Developer agrees to clearly identify any information it deems to be Confidential Information and not subject to mandatory disclosure under the FOIA or other applicable law as Confidential Information at the time it provides such information to the Locality. The Locality agrees that, except as required by law and pursuant to the Locality’s police powers, neither the Locality nor any employee, agent or contractor of the Locality will knowingly or intentionally disclose or otherwise divulge any such confidential or proprietary information to any person, firm, governmental body or agency, or any other entity

unless the request for Confidential Information is made under a provision of Local, State or Federal law. Upon receipt of such request but before transmitting any documents or information which may contain Confidential Information, the Locality will contact Developer to review the request for information and associated documents to determine if any Confidential Information is at risk of disclosure. If Confidential Information exists, Developer may intervene on behalf of the Locality and defend against disclosure of the Confidential Information. The Locality agrees to cooperate in this defense and to the extent allowed by law, work to protect the Confidential Information of Developer.

12. **Severability; Invalidity Clause.** Any provision of this Agreement that conflicts with applicable law or is held to be void or unenforceable shall be ineffective to the extent of such conflict, voidness or unenforceability without invalidating the remaining provisions hereof, which remaining provisions shall be enforceable to the fullest extent permitted under applicable law. If, for any reason, including a change in applicable law, it is ever determined by any court or governmental authority of competent jurisdiction that this Agreement is invalid then the Parties shall, subject to any necessary Locality meeting, vote, or other procedure, undertake reasonable efforts to amend and/or reauthorize this Agreement so as to render the invalid provisions herein lawful, valid and enforceable. If the Parties are unable to do so, this Agreement shall terminate as of the date of such determination of invalidity. The Parties will cooperate with each other and use reasonable efforts to defend against and contest any challenge to this Agreement by a third party.

13. **Entire Agreement.** This Agreement and any schedules or attachments constitute the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Parties hereto with respect to the subject matter hereof. No provision of this Agreement can be modified, altered or amended except in a writing executed by all Parties hereto.

14. **Presumption.** This Agreement was drafted with input by the Locality and Developer, and no presumption shall exist against any Party.

15. **Liability of Officers and Agents.** No officer, agent, or employee of the Locality or Developer or its affiliates shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.

16. **Force Majeure.** Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall NOT include (i) financial

distress nor the inability of either Party to make a profit or avoid a financial loss, (ii) changes in market prices or conditions, or (iii) a Party's financial inability to perform its obligations hereunder.

17. **Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person shall have any right, benefit, priority or interest in, under or because of the existence of, this Agreement.

18. **Representations.** Each Party represents as follows:

a. It has the power and authority to enter into and perform this Agreement; and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or governmental action, as applicable; and

b. No suit, action, arbitration, legal, administrative or other proceeding is pending or, to the best of its knowledge, has been threatened against it that would affect the validity or enforceability of this Agreement or its ability to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on its performance of this Agreement.

19. **Counterparts; Electronic Signatures.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, PDF or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Execution of this document is on the following page.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the officers whose names appear below as of the Effective Date.

HENRY COUNTY, VIRGINIA

By: _____

Its:

APPROVED AS TO FORM:

By: _____

George Lyle, Esquire
County Attorney

AXTON SOLAR LLC

a Delaware limited liability company

By: _____

Its:

Attachment A

Parcel ID	Zoning	Acres
46.5(000)000/037D	A1	22.14
46.5(000)000/038D	A1	37.4
46.8(000)000/034	A1	99.92
46.8(000)000/054	A1	9
46.8(000)000/020	A1	36.06
46.8(000)000/020B	A1	14.02
46.8(000)000/023	A1	103.85
44.6(000)000/053	A1	287.68
45.7(000)000/108	A1	89.12
46.7(000)000/016	A1	47
46.7(000)000/016D	A1	10.92
46.7(005)000/001A	A1	2.97
46.7(005)000/001B	A1	2.88
46.7(000)000/017C	A1	16.34
46.7(000)000/017E	A1	0.222
46.7(000)000/013	A1	21.685
46.4(000)000/015	A1	77.678
46.7(000)000/016A	A1	66.875
46.7(000)000/016E	A1	10.448
46.7(000)000/011	A1	17.429
45.9(000)000/099	A1	78.231
46.7(000)000/017	A1	8.8
46.7(000)000/017I	A1	3.45
46.7(000)000/028	A1	4.3
45.7(000)000/009X, 11, 15, 16	B1	23.857
Total		1,092.275