

RESOLUTION 2023-4

NEAHKAHNIE WATER DISTRICT
9155 Nehalem Road
Nehalem, Oregon 97131
(503)368-7309

RESOLUTION 2023-4 - A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
NEAHKAHNIE WATER DISTRICT AUTHORIZING SETTLEMENT OF CONDEMNATION LAWSUIT

WHEREAS, on February 12, 2019, the Board of Commissioners of the Neahkahnrie Water District ("the District"), adopted a Resolution 2018-2019-4 authorizing the possible condemnation of certain real property (described in attached Exhibit A, hereto; "the Property") in order to preserve the pristine nature of the District's water supply and the future water quality and environmental integrity of the District's water supply system to its customers;

WHEREAS, the District had the power of eminent domain under ORS Ch. 35 to condemn such property;

WHEREAS, the District, through its Board of Commissioners, its staff and its legal counsel, attempted to initiate and foster discussions with the Property's owners concerning the use and development of the Property so that the District and its customers could be assured that such use and development would not compromise the pristine nature of the water source nor compromise the quality and environmental character of the District's water supply system;

WHEREAS, such discussions were based on independent studies and analyses performed by qualified experts, which identified the unique characteristics which the District's water supply possesses and raised reasonable concerns about the preservation of such unique characteristics from the use and development of the Property

WHEREAS, the Property's owners, despite being offered multiple opportunities to engage the District in discussions about the independent studies and analyses, the Property's owners refused to conduct the needed studies and were unable to provide any credible, independent information in response to the studies and analyses provided to the District;

WHEREAS, the Property's owners instead continued with plans for the development of the Property for a multi-unit residential project;

WHEREAS, the District's Board of Commissioners reasonably believed that such development would pose risks to the District's water supply and water supply system;

WHEREAS, based on the Property's owners non-responsiveness to the District's concerns and the District's Board of Commissioners it was determined that it was necessary for the District to use its powers of eminent domain to protect the District's two most important assets (its water supply and supply system); the Board of Commissioners was, therefore faced with two choices: either accede to the Property owners publicly announced and advertised plans to develop the

Property without addressing the District's concerns and questions or utilize the District's condemnation authority;

WHEREAS, in good conscience and in support of the District's public obligations to maintain a pristine water supply and a safe, clean and environmentally appropriate supply system, the Board of Commissioners directed the District's legal counsel to proceed with condemnation of the Property;

WHEREAS, legal counsel utilized the process under ORS Ch. 35, which directs multiple opportunities to resolve matters in dispute with property owners prior to filing any condemnation litigation;

WHEREAS, despite such efforts by the District's legal counsel, the Property's owners refused to discuss any possible resolution which would address the District's concerns;

WHEREAS, because of such refusals, the District's Board of Commissioners instructed legal counsel to file condemnation proceedings for the District's acquisition of the Property;

WHEREAS, on December 15, 2020, the District initiated condemnation proceedings in Tillamook County Circuit Court, seeking to acquire the property for the sum of \$961,000, based upon an independent appraisal of the Property's value;

WHEREAS, the Property owners responded by claiming: (a) that the District had no legal authority to condemn the Property and (b) that if the District did have such right, the value of the Property and damages recoverable for its condemnation were \$5,250,000.00;

WHEREAS, the owners removed the litigation to the U.S. District Court for the District of Oregon ("the federal court") based on the owners not being Oregon residents;

WHEREAS, throughout the federal court process, the parties were encouraged to settle the case and such settlement efforts periodically ensued;

WHEREAS, at no time did the Property's owners provide any credible evidence or legal basis substantiating their claim that the District lacked legal authority to condemn the Property; under Oregon law, there is a heavy legal presumption that a public agency acting under ORS Ch. 35 has established the right to condemn; there was no issue ever raised that the District failed to comply with ORS Ch. 35;

WHEREAS, the District believed that the sole issue between the parties was the compensation to be paid to the property's owners for the condemnation;

WHEREAS, to move the litigation resolution process forward in the District's best interest and in recognition that there could be a reasonable difference of opinion as to the Property's value, the District submitted to the Property owners an Offer of Compromise under ORS 35.300, to resolve the dispute over the District's right to condemn and the just compensation owed for

the Property; such Offer is required to specify a specific sum to be paid to the property owner as just compensation for the taking of the property;

WHEREAS, on November 10, 2022, the District submitted such an Offer of Compromise to the Property's owners and on November 14, 2022, they accepted the Offer and the amount of \$1,750,001.00 as just compensation for the taking of the Property;

WHEREAS, left unresolved by the Offer of Compromise, were issues of the Property owners' reasonable attorney fees and costs of litigation; under ORS Ch. 35, the owners were entitled to recover such items because the Offer was in excess of the amount originally offered by the District for the Property;

WHEREAS, the Property's owners claimed that they were entitled to reasonable costs and attorney fees in an amount exceeding \$990,000 and that this amount would increase if further litigation ensued regarding the amount of the fees; the District strenuously disputed that the Property owners were entitled to the full amount claimed, but attempted to re-initiate discussions resolving all issues expeditiously and with minimizing risk and further expenses;

WHEREAS, through the negotiation process, the District obtained agreement from the Property's owners, subject to Board of Commissioners approval, that the total amount of \$2,250,000.00, would be satisfactory to the owners and would bring the litigation to a final conclusion;

WHEREAS, there are unpaid property taxes owed on the Property that must be paid as a condition of Tillamook County recording transfer of title of the Property;

WHEREAS, the property owners have agreed to reduce the total amount they will accept in exchange for the District assuming responsibility for paying those taxes;

WHEREAS, the terms of the settlement agreement, subject to the Board's approval, are reflected in the form of Proposed Stipulated Judgment and Order attached hereto as Exhibit 1;

NOW THEREFORE, the Board of Commissioners hereby approves and agrees to the terms of settlement as substantially reflected above and in Exhibit 1;

AND IT IS FURTHER RESOLVED, that the District's legal counsel is authorized and directed to take all steps they deem reasonable or necessary to terminate the condemnation litigation on the terms described above and as substantially reflected in Exhibit 1. The Board's intent is that the settlement and conclusion of the litigation be done expeditiously and without further financial outlay by the District, other than for the District's professional fees.

DATED : May 2, 2023.

VOTE: YES NO

BOARD OF COMMISSIONERS

Bob Joseph
Bob Joseph, Chair

Barb Rippey
Barb Rippey, Secretary

David Boone
David Boone

Tom Ayres
Tom Ayres

Larry Kiser
Larry Kiser