

At a meeting of the Town of Schoharie
Town Board held on June 14, 2023 at 6:30
p.m.

RESOLUTION NO. 34-2023

**TITLE: AUTHORIZATION OF INITIATING REVIEW AND
CONSIDERATION OF USE OF EMINENT DOMAIN,
THE TOWN OF SCHOHARIE, NEW YORK**

In The Matter of Authorization of Initiating Review and Consideration of Use of Eminent
Domain For Use In Public Project By The Town Of Schoharie, New York,

WHEREAS, the Town of Schoharie, New York ("Town"), has been operating and
maintaining the land and infrastructure comprising the sewer ("Sewer System") and water
("Water System") systems, and the two roads (Park Place and Holiday Way) (collectively
referred to as the "Public Infrastructure"), at the Schoharie Business Park located at beginning at
the intersection of NYS Rt. 30A ad Park Place, Schoharie, New York ("Park"), which constitutes
a public use project in the Town;

WHEREAS, 7 Summits LLC and its principal Michael Shaughnessy ("Owner") of 77
Carefree Lane, Lake George, NY acquired the Park and the Systems on or about July 13, 2017
(Schoharie County Book of Deeds 1049, page 39);

WHEREAS, Mr. Shaughnessy's attorney notified the Town in a letter dated April 3,
2018 that the Transportation Corporations established prior to construction of the SBP had been
dissolved by the Secretary of States Office in 2010. Between July 13, 2017 and April 2018 Mr.
Shaughnessy failed to operate and maintains the Systems since that time and has otherwise
abandoned the Systems;

WHEREAS, the Town has operated and maintained the Sewer System since January 1,
2019, the Water System since January 1, 2020, and the Roadways since January 1, 2022,

including obtaining funding for and incurring costs for operating and maintaining the Systems so they can continue to operate and support the Park and its tenants;

WHEREAS, the Owner has abandoned the Water and Sewer Systems and Roadways and otherwise abdicated its legal and financial responsibilities for the Infrastructure, and the Town has made good faith efforts endeavoring to have the Owner otherwise accept and take responsibility for operating and maintaining the Water and Sewer Systems, but the Owner has continually failed and refused to take responsibility and has repeatedly made unreasonable demands that the Town pay substantial sums of money to formerly acquire lands/infrastructure that constitute the Water and Sewer Systems and Roadways;

WHEREAS, based upon the Owner's unreasonable position and continued refusal to take responsibility for operating and maintaining the Infrastructure, the Town has concluded it has no reasonable options but to initiate a process for formally acquiring the Water System and Sewer System through Eminent Domain;

WHEREAS, the Town of Schoharie Town Board ("Board") considers the Park and the continued operation and maintenance of the Water and Sewer Systems and Roads as a public use that is beneficial to the Town and its residents by ensuring continued operations at the Park;

WHEREAS, the Board determines that it is in the best interests of the Town and its residents that the Park and its Water and Sewer System and Roadway continue to properly operated and be maintained, and therefore it is in the best interests of the health, safety and welfare of the Town and its residents to ensure such;

WHEREAS, the Board has endeavored and will continue to endeavor to acquire the Water System and Sewer System by voluntary compliance, but the Board acknowledges that voluntary compliance may not be achieved for all the necessary acquisitions requiring that the

Board start to review and consider exercising its powers of Eminent Domain to acquire the Systems and ensure continued proper operation and maintenance of the Systems;

WHEREAS, if the Board ultimately determines to acquire the Systems by Eminent Domain, the Town will undertake a review of the possible environment impacts under the State Environmental Quality Review Act (ECL Article 8 and 6 NYCRR Part 617)(“SEQRA”), however, at this time the Board is not committed to taking any particular action but rather is approving the review and consideration of using Eminent Domain to allow the Town and its consultants to investigate and determine whether use of Eminent Domain is in the best interests of the Town for this matter; and

WHEREAS, further, the proposed continued use and maintenance of the Systems is not a new action associated with any new possible environmental matters that were not otherwise considered when the Park was approved and constructed, rather, the continued use and maintenance of the Systems is consistent with the prior review and approvals for the Park and Systems.

NOW WHEREFORE, BE IT RESOLVED AS FOLLOWS BY THE TOWN OF SCHOHARIE TOWN BOARD, SCHOHARIE COUNTY, NEW YORK:

THAT THE Town of Schoharie Town Board hereby determines that voluntary compliance by the Owner has not been practicable, as such the Town and its legal agents are authorized to review and consider the use of Eminent Domain to formally acquire the Systems and any related lands/infrastructure needed to properly support continued operation and maintenance of the Systems and other infrastructure at the Park that is not being maintained or operated by the Owner; and

BE IT FURTHER RESOLVED, that the Board, its Consultants and the Attorney for Town are hereby directed to take such actions as are necessary to implement this resolution; and

BE IT FURTHER RESOLVED, that the Board will hold a public hearing on the use of Eminent Domain for acquiring the needed Public Infrastructure at the Board's next regularly scheduled meeting, on July 12, 2023, and the Town Clerk and consultants are directed to take necessary action to provide the required notice for that public hearing.

Town of Schoharie Town Board Member Benjamin Oevering so moved; Town of Schoharie Town Board Member Floyd Guernsey Seconded, and the Town of Schoharie Town Board voted as follows:

	AYE	NAY
Alan Tavenner	<u>X</u>	_____
Floyd Guernsey III	<u>X</u>	_____
Benjamin Oevering	<u>X</u>	_____
Matthew Brisely	<u>X</u>	_____
Marion Jacqueway	<u>X</u>	_____

STATE OF NEW YORK)
COUNTY OF SCHOHARIE)

I have compared the preceding copy with the original Resolution on file in this office adopted by the Town of Schoharie Town Board at a regular meeting held June 14, 2023, and I DO HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole of the original. I further certify the vote thereon was as follows:

MEMBERS PRESENT **5**

MEMBERS ABSENT **Ø**

VOTE **5**

Witness my hand and the seal of the Town of Schoharie, this 15th day of June, 2023.

Pamela Foland

Pamela Foland, Town of Schoharie Town Clerk

OFFICIAL