

MEMORANDUM

TO: Board of Trustees

FROM: Josh Nelson
Interim General Counsel

REVIEWED BY: Tim Callicrate
Chairman, Board of Trustees

Indra S. Winquest
General Manager

SUBJECT: Review, discuss and potentially provide approval to seek repayment of attorney fees and costs incurred for the litigation of Aaron L. Katz vs IVGID, estimated not to exceed \$25,000.

DATE: October 27, 2020

I. RECOMMENDATION

That the Board of Trustees provide direction to Staff on whether to (1) to seek attorney fees and costs incurred by the District in Case No. CV11 01380 Aaron L. Katz vs. IVGID under Nevada Supreme Court Appeal No. 71493, which is estimated to cost not to exceed \$25,000 or (2) to decline to seek additional legal fees and costs.

The recommendation of special counsel Tom Beko of Erickson, Thorpe, & Swainston, Ltd., concurred to by Interim General Counsel Josh Nelson, is Option #2.

II. BACKGROUND

On October 5, 2020, the District received notice that the United States Supreme Court denied Mr. Katz's Writ of Certiorari regarding Nevada Supreme Court Appeal No. 71493. Based on this, Mr. Katz has exhausted all appellate review of the court's decision to award the District its attorney fees and costs incurred at the trial court. This amount is \$241,046.11.

Since the beginning of this case, the District has incurred substantial fees and costs to defend this action. This is currently \$533,032.25. As an initial matter, there are three components of incurred attorney fees and costs in this case: (1) those

previously recovered from Mr. Katz, (2) those incurred related to the first appeal, and (3) those incurred related to the second appeal. The present item before the Board only relates to whether or not to seek to recover the third group of fees and costs. This third group is estimated at \$70,000.

For this group, the District has two options: (1) file a motion to recover a portion of these additional fees and costs or (2) decline to do so. For Option #1, the District can file a motion seeking its attorney fees and costs incurred to defend against Mr. Katz's appeals and other matters since the initial attorney fee award. Importantly, the fact that the District received its initial fees and costs does not mean that it will necessarily receive its additional fees and costs. While the District has a strong argument that it should similarly receive its additional fees and costs given the lack of merit in Mr. Katz's case and appeal, this would likely require demonstrating that the appeal was frivolous. Even in this case, this would be a high bar to meet.

There would be additional fees and costs incurred to file the motion and related litigation to recover these fees and costs. Staff anticipates that this would cost up to \$25,000. Of course, the cost of litigation is notoriously difficult to estimate accurately and could exceed this amount.

For Option #2, the District could decline to attempt to recover its additional fees and costs. This would effectively end the litigation. Of course, the District would not recover the additional fees and costs.

Ultimately, the decision to seek to recover additional fees and costs is a policy determination for the Board. However, to assist the Board's deliberation, staff recommends Option #2. This has been a long, frustrating process, and staff understands the importance of ensuring that the responsible party bear the cost of litigation. That being said, the District will incur additional fees and costs estimated at up to \$25,000 to recover the previously incurred fees and costs. Moreover, the District's recovery of fees, while more likely than not, is not guaranteed. It would also reopen the litigation and could result in additional procedural efforts by Mr. Katz on other issues. For these reasons, staff recommends that the District not seek to recover the additional fees and costs. The finality of moving forward outweighs the additional cost and uncertainty associated with seeking to recover the additional fees and costs.

III. FINANCIAL IMPACT AND BUDGET

To date, the District has incurred \$533,032.25 in attorney fees and costs. Mr. Katz has paid the District \$241,046.11, of which \$39,849.37 may need to be repaid to the Nevada POOL/PACT, and that leaves a total of \$291,986.14 in fees paid by the District for attorney fees and costs. Of this amount, the District could recover a portion, estimated at \$70,000, if successful on a motion for attorney fees and costs. Staff estimates that filing a motion and related procedural actions to recover the additional fees and costs is estimated not to exceed \$25,000.

IV. ALTERNATIVES

The Board can either (1) to seek all attorney fees and costs incurred by the District in Case No. CV11 01380 Aaron L. Katz vs. IVGID under Nevada Supreme Court Appeal No. 71493, which is estimated to cost not to exceed \$25,000 or (2) to decline to seek additional legal fees and costs.

V. BUSINESS IMPACT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.