

City of Salem, Oregon  
Appeal of use of Stormwater System Development Charge Funds  
For the purchase of real property at  
298 Taybin Road NW

June 2, 2020

**Issue**

On May 20, 2020, E.M. Easterly submitted a letter to the City Council appealing the use of Stormwater System Development Charge (SDC) funds for the purchase of real property at 298 Taybin Road NW.<sup>1</sup> Mr. Easterly's appeal is pursuant to Oregon Revised Statutes 223.302(2) and Salem Revised Code 41.180(c), which allow any citizen to challenge an expenditure of system development charge revenues within two years of the subject expenditure. This report provides the background of the expenditure, a summary and analysis of the appeal, and the staff recommendation. Mr. Easterly's contention is the use of Stormwater SDC funds is inconsistent with applicable state statutes.

**Background**

In late 2017, staff learned that the property at 298 Taybin Road NW was proposed for development. The property is within the adopted Marine Drive NW alignment and abuts an unnamed waterway along the west edge of Wallace Marine Park. Staff worked with the property representatives and owners to come to an agreeable purchase price for the property. In October 2019, staff recommended to Council acquisition of this parcel for immediate use as stormwater detention, streambank conservation, and possible future use for Marine Drive NW construction. Given its immediate planned use, staff recommended use of Stormwater System Development Charge funds for its acquisition. Future use of the western portion of the parcel for transportation purposes would require reimbursement to the Stormwater SDC fund for that portion of the property.

On November 25, 2019, Council approved entering into a purchase and sale agreement with JDV Investments LLC for the acquisition of the property. The staff report (File #19-538) showed the total amount of the purchase, \$401,764.52 and indicated the source of funds was from

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<sup>1</sup>In addition to his May 20, 2020, appeal letter, Mr. Easterly has provided the following correspondence to staff, Budget Committee and Council on this issue:

1. Memorandum to City Council (May 20, 2020)
2. Letter to Dan Atchison, City Attorney (May 12, 2020, updated May 18, 2020)
3. Letter to Salem Budget Committee (May 13, 2020)
4. Letter to Dan Atchison, City Attorney (May 8, 2020)
5. Letter to Robert Barron, Chief Financial Officer (April 27, 2020)
6. Email to Robert Barron, Chief Financial Officer (April 21, 2020)

Stormwater System Development Charges. The real estate purchase closed on January 30, 2020.

### **Easterly Appeal**

Mr. Easterly raises the following issue in his appeal:

Stormwater SDC funds were used to purchase land not included in the list of eligible projects identified in the current *Salem Stormwater Master Plan* in violation of the limitations described in ORS 223.307.

### **Pertinent Law**

System development charges are governed by ORS Chapters 223.209 to 223.314. The pertinent sections related to the appeal are found in:

- ORS 223.307, which defines the authorized expenditures of system development charges and how these expenditures must be identified in adopted plans; and
- ORS 223.309, which establishes the requirements for preparing and adopting a methodology for capital improvements financed by system development charges.

ORS 223.307(2), states that SDCs may be spent only on capacity increasing capital improvements. The statute further states that increases in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities, and the portion of the improvements funded by SDCs must be related to the need for increased capacity to provide service for future users.

ORS 223.307(4), states that any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list adopted by a local government pursuant to ORS 223.309 (Preparation of plan for capital improvements financed by system development charges).

ORS 223.309(1), requires a local government to prepare an infrastructure master plan that includes a list of the capital improvements that the local government intends to fund, in whole or in part, with revenues from an SDC and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement.

### **Analysis**

Consistent with the requirements of ORS 223.223.309(1), the City has an adopted *Stormwater Master Plan* and a Stormwater SDC Methodology. These were adopted in 2000 and 2002, respectively. Both documents include detailed lists of capacity improvement projects totaling \$203,562,000 in (2000 dollars).

In addition to specific projects, the *Stormwater Master Plan* also envisioned and addressed the need for capacity enhancing improvements to miscellaneous small pipes and ditches. The Plan included an allowance of 5 percent to the total estimated projects for small conveyance improvements, 2 percent for implementation of water quality facilities, and 3 percent for stream restoration/habitat improvement (page 5-8).

Similar language is repeated in Section 2, page 14 of the Stormwater SDC methodology. Under Capital Requirements to Serve Growth, it states “costs include a 5 percent allowance for unspecified but anticipated small system conveyance projects within each basin as included in the Master Plan.” In Table 3 of the methodology, there is a line item for “Small System Conveyance” as described in the language above, and the dollar amount says, “Included in subtotal cost” with no dollar amount. The allowance for small projects would total 5 percent of \$203,562,000, or \$10,178,100 (in 2000 dollars).

In conclusion, Mr. Easterly is correct that the Taybin property acquisition is not specifically listed in the project tables for West Bank Basin in Appendix B of the methodology. However, the acquisition is consistent with the allowance for small projects identified in Table 3 of the methodology. Therefore, the City complied with all applicable state statutes when purchasing the property with stormwater SDC funds.

### **Staff Recommendation**

Based on the analysis of Mr. Easterly’s concerns and the conclusion reached, staff recommends Council reject Mr. Easterly’s appeal.