

Amy Johnson

From: E Easterly <emeasterly@comcast.net>
Sent: Wednesday, July 08, 2020 3:40 PM
To: CityRecorder
Subject: Document #5
Attachments: SW appeal referenced materials..pdf

Categories: Follow-up

Attached is Document #5 containing reference materials relevant to the July 13th Stormwater SDC expenditure appeal. Please include Document 5 in the July 13th Council packet.

E.M. Easterly

To: Salem City Council

From: E.M. Easterly

Re West Bank Basin Stormwater SDC small conveyance funds land purchase appeal
Referenced materials Document #5

Date July 8, 2020

Not knowing whether staff has included previously referenced materials I am submitting eight earlier cited papers and responses.

Item A-1 Is the original staff recommendation attached to the November 25, 2019 City Council meeting consent calendar item adopted by Council on that date. It is this Stormwater SDC fund expenditure recommendation and approval that I am appealing.

A-1 November 25, 2019 staff report page 2

Items B 1-6 are the submissions from E.M. Easterly listed as only a footnote report on the June 2nd staff report included by staff on the June 22 Action Item Easterly appeal document list. Why staff elected to cite but not include those items is a mystery. The six items are included here to insure they are part of the hearing record.

B-1 Memorandum to City Council (May 20, 2020) page 4

B-2 Letter to Dan Atchison, City Attorney (May 12, 2020, updated May 18, 2020) page 6

B-3 Letter to Salem Budget Committee (May 13, 2020) page 8

B-4 Letter to Dan Atchison, City Attorney (May 8, 2020) page 10

B-5 Letter to Robert Barron, Chief Financial Officer (April 27, 2020) page 14

B-6 Letter/Email to Robert Barron, Chief Financial Officer (April 21, 2020) page 17

Item A-1**CITY OF SALEM**555 Liberty St SE
Salem, OR 97301**Legislation Details (With Text)**

File #: 19-538 **Version:** 1

Type: Action Item **Status:** Passed

File created: 11/7/2019 **In control:** City Council

On agenda: 11/25/2019 **Final action:** 11/25/2019

Title: Purchase and Sale Agreement with JDV Investments LLC for acquisition of real property located at 298 Taybin Road NW

Ward(s): 1
 Councilor(s): Kaser
 Neighborhood(s): West Salem Neighborhood Association
 Result Area(s): Natural Environment Stewardship; Safe, Reliable and Efficient Infrastructure

Sponsors:**Indexes:****Code sections:****Attachments:** 1. Location Map, 2. Proposed Agreement

Date	Ver.	Action By	Action	Result
11/25/2019	1	City Council	approved	Pass

TO: Mayor and City Council**THROUGH:** Steve Powers, City Manager**FROM:** Kristin Retherford, Urban Development Department Director**SUBJECT:**

Purchase and Sale Agreement with JDV Investments LLC for acquisition of real property located at 298 Taybin Road NW

Ward(s): 1
 Councilor(s): Kaser
 Neighborhood(s): West Salem Neighborhood Association
 Result Area(s): Natural Environment Stewardship; Safe, Reliable and Efficient Infrastructure

ISSUE:

Shall the City Council authorize the City Manager to execute the attached Purchase and Sale Agreement with JDV Investments LLC for the acquisition of real property located at 298 Taybin Road NW?

RECOMMENDATION:

File #: 19-538, **Version:** 1

Authorize the City Manager to execute the attached Purchase and Sale Agreement with JDV Investments LLC for the acquisition of real property located at 298 Taybin Road NW.

SUMMARY:

JDV Investments LLC (Seller), whose Member is James D. Vick, owns the property located at 298 Taybin Road NW (Property) (Attachment 1). The City is interested in acquiring the Property for stormwater detention and potential future right-of-way for Marine Drive NW.

FACTS AND FINDINGS:

Staff and Seller have come to terms of an agreement (Agreement) (Attachment 2) for the acquisition of the Property. Key terms of the Agreement are below.

Sale Price:	\$375,000
Acreage:	0.9
Demolition Funds/Earnest Money:	\$26,764.52
Special Conditions:	Seller to remove existing improvements prior to sale utilizing City-paid Demolition Funds
Closing Date:	No later than February 28, 2020

BACKGROUND:

Funds for the Property acquisition will come from Stormwater System Development Charges.

Clint Dameron
Real Property Services Manager

Attachments:

1. Location Map
2. Proposed Agreement

Item B-1

To Salem City Council

From E.M. Easterly

Re West Bank Basin Stormwater SDC small conveyance funds land purchase appeal

Date May 20, 2020

The 2000 Stormwater Master Plan does, in fact, offer a 5% allowance for small conveyance improvements to each of the basin project lists. However, this allowance includes specific restrictions – size and purpose. The size restriction is not directly defined but certainly new projects must be less than Project WBB8 listed on Table 6-9.

"An allowance of 5% was added to the project total for small conveyance improvements."

Page 5-8

The phrase "small conveyance improvements" is further focused and explained:

"The DSIP project development process did not recommend drainage improvements for relatively small pipes and ditches which were beyond the scope of the modeling effort."¹

Page 5-8

The allowance clearly permits small conveyance improvements outside the project list offered on Table 6-9, reproduced on page 2. The total moneys available for these future pipe & ditch drainage improvements is \$200,554.

The 5% allowance raises several questions:

1. How much of the \$200,554 small conveyance pipe and ditches moneys has been expended between 2000 and 2019?
2. Is there any restraint other than amount of SDC revenue available that limits expenditure of the full \$200,554 in one year on a single project?
3. What are the processes that allow the City to expend more than \$200,554² from Stormwater SDC revenue on small conveyance pipe and ditch projects in a single year?
4. In 2020 the City expended \$401,764.52 stating that the funding source was from the Stormwater SDC 5% small conveyance improvement allowance. How does the City justify this more than doubling the allowed expenditure of the small conveyance pipe and ditch adopted allocation? Adding the inflation factor offered in the 2019 draft Stormwater Master Plan brings the original 5% allowance to \$334,524 not \$401,000 plus expended in 2020.
5. What are the pipe and ditch improvements secured with the \$401,764.52 expenditure?
6. What are the stormwater infrastructure improvements resulting from the 2020 land purchase?
7. What other non-stormwater infrastructure benefits are secured by this stormwater SDC funded purchase?

Absent convincing evidence that the 298 Taybin Road NW land purchase addressed all the issues raised by the above questions, I request that the Salem Stormwater SDC revenues expended be returned to the Stormwater SDC fund in accordance with SRC 41.180(c).

¹ The draft 2019 Stormwater Master Plan update provides no equivalent descriptive language. The proposed draft entry simply states: "A small conveyance improvement allowance of five-percent is applied to the subtotal of each project." Page 5-3

² The draft 2019 Stormwater Master Plan update offers an inflation multiplier of 1.668. Page 5-3

City of Salem Stormwater Master Plan

Table 6-9
West Bank Basin DSIP Project List

DSIP Proj. ID	City of Salem CIP ID	Location	Recommended Improvement	Total ¹	Early Action Item?	Comments
WB81		Wallace Rd between Orchard Hts and Taylors Rd	Replace undersized pipe	\$ 224,315		
WB82		From Wallace Rd and Glen Creek Rd to Gerth Ave and 9th	Replace undersized pipe	\$ 1,181,238	Yes	Street CIP G.O. Bond F (2000-01, 2004-05) , bad pipe, alignment, debris, proposed Walker School Park
WB83		From Cascade Drive to 9th and Gerth	Replace undersized pipe	\$ 229,692	Yes	Adverse grade
WB84		8th Ave between Gerth Ave and Rosemont Ave	Replace undersized pipe	\$ 381,480	Yes	High water complaints
WB85		Senape St between 6th Ave and the Willamette River	Replace undersized pipe	\$ 725,084		Heavy roots, silt, gravel, bad joints
WB86		Culvert across the Salem-Dallas Hwy. near Moores Wy	Replace undersized pipe	\$ 238,000		ODOT coordinations, LWI implications
WB87		Culvert across Eola Dr near the intersection of Eola Dr and Turnage St	Replace undersized culvert	\$ 81,294		Street CIP (2004-05)
WB88		Culvert across Jasper Wy near intersection with Eola Dr	Replace undersized culvert	\$ 8,528		
WB89		Along Eola Dr between Gehlar Rd and Sunwood Dr	Replace undersized pipe	\$ 91,432		Street CIP (2004-05)
WB810		Barberry St between 23rd Ct and Eola Dr	Replace undersized pipe	\$ 101,065		Street CIP (2004-05)
WB811		Eola Dr near intersection with Sunwood Dr	Add detention capacity at Woodhaven Detention Facility	\$ 748,850	Yes	
Subtotal				\$ 4,011,097	-	
Small conveyance improvement allowance				\$ 200,554.87	-	This allowance is 5% of the subtotal
Total (\$)				\$ 4,211,652		

1. INCLUDES ALLOWANCES FOR PERMITTING, ACQUISITION, PREDESIGN, AND FINAL DESIGN (15%), ADMINISTRATION (8%), CONSTRUCTION MANAGEMENT (8%) AND CONTINGENCY (40%).

Item B-2

775 Fir Gardens St. NW ♦ Salem, OR 97304
emeasterly@comcast.net ♦ 503-363-6221

Mr. Daniel Atchison, City Attorney
 City of Salem
 555 Liberty St. SE
 Salem, OR 97301-3513

Updated:

May 12, 2020

May 18, 2020

copy: Salem City Council
 via: citycouncil@cityofsalem.net

Dear Mr. Atchison;

Thank you for providing the administration's response to my written testimony to the FY 2020-2021 Salem budget committee.

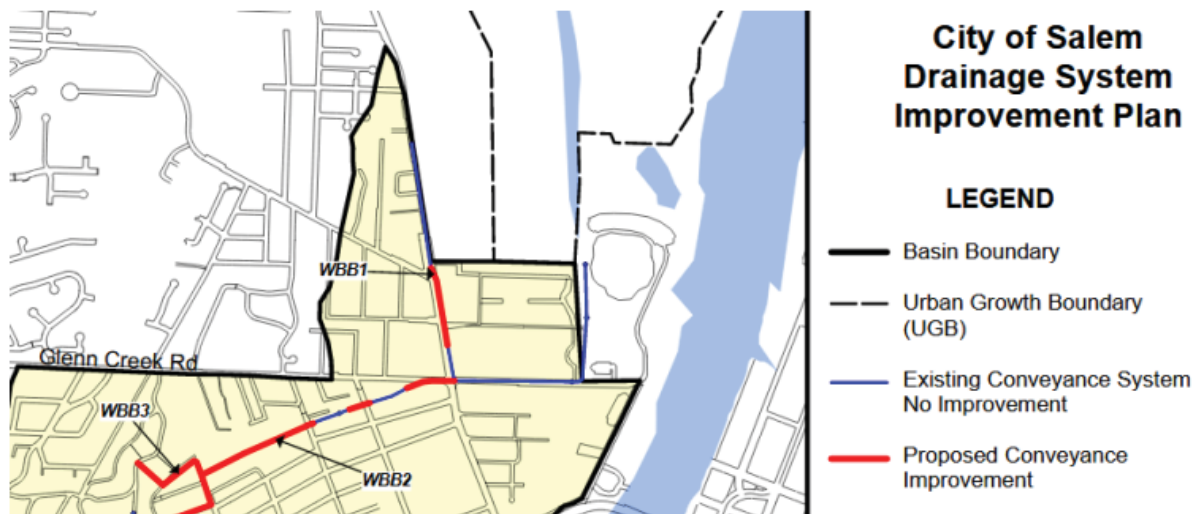
Your summary of the 309 list application regarding System Development Charge fees and eligible projects is appreciated. Your reference to the yet to be adopted 2019 Stormwater Master Plan which will replace the September 2000 Stormwater Master Plan when adopted by Council is illuminating.

You cite ORS 223.307 which stipulates the following:

“(4) 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).”

This language declares that a project funded with SDC fees requires that the project be included in an adopted 309 list. There is no Stormwater project associated with the drainage way between Glenn Creek Road and Taybin Road along Wallace Marine Park in the 309 projects listed for the West Bank Drainage of the **draft** 2019 Stormwater Master Plan. The map segment from the **draft** 2019 Stormwater Master Plan below highlights in Red projects eligible for Stormwater SDC funding.

According to Map 15.2 the parcel of land purchased with Stormwater SDC funds November 2019 was not and is not a 309 listed stormwater conveyance or flow control project.



Page 15-9

As the legend states the drainage way between Glenn Creek Rd and the city-limits north of Cameo Rd is listed as “Existing Conveyance System: No Improvement.” Nevertheless, staff recommended and Council approved the purchase of land for the designated purpose of supporting “Reliable and Efficient

Infrastructure”. What stormwater infrastructure did this purchase accomplish?

Also, thank you, Mr. Atchison, for referencing the **draft** 2019 Stormwater Master Plan and more specifically the “small conveyance improvement allowance” language included in the **draft** 2019 Stormwater Master Plan quoted below.

“The costs for projects in the 2000 Stormwater Master Plan also include allowances for permitting, acquisition, pre-design, and final design (15%); administration (6%); construction management (9%); and contingency (40%). A small conveyance improvement allowance of five-percent is also applied to the subtotal.”

Page 3-1

You claim: “... the projects that utilized FY19 and FY20 Stormwater SDC revenues were all included within the 5 percent allowance for small projects in the City’s stormwater master plan and in the City’s Stormwater Methodology and 309 list.” Mr. Atchison, you offer no evidence in support of this declaration.

The five-percent financial addendum appears to address a level of flexibility which would allow for Stormwater SDC funds to be used for non-309 list projects. But it also raised questions.

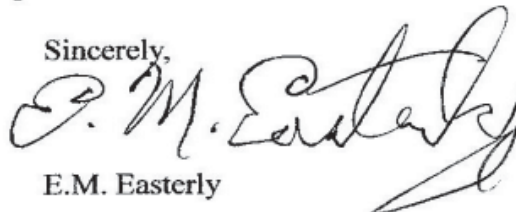
The West Bank section of the **draft** 2019 Stormwater Master Plan 309 list shows 5 projects with a total estimated SDC funding of \$2,934,157. Five-percent of that amount is \$146,707.85; not the \$375,000 expended to acquire the Taybin parcel of land with stormwater SDC funds. Nor is the Taybin site included in West Bank 309 project list. And while some future “small” stormwater conveyance may be the end result, the cost of the land far exceeds the permitted five-percent utilization granted by the **draft** Stormwater Master Plan for “small conveyance improvements.”

Please understand when Council authorized the Taybin property purchase, November 2019, the Salem 2000 Stormwater Master Plan was in effect and still is. Therefore, while the Atchison citation of **draft** 2019 Stormwater Master Plan provisions is informative, those provisions do not and cannot apply to City of Salem SDC expenditures until adopted by Council.

Simply put, your effort to cite and utilize the policy statements of the **draft** 2019 Stormwater Master Plan is inappropriate. That plan has not been adopted by the Salem City Council. Therefore, the use of Stormwater SDC funds must be guided by the Council adopted 2000 Stormwater Master Plan 309 listed projects and the language ORS Chapter 223. [May 18th update below.]¹

When Council initiates the replacement of the 2000 Stormwater Master Plan with a version of the **draft** 2019 Stormwater Master Plan. I shall happily participate. Until then the utilization of Stormwater SDC funds for projects and/or land purchases in the West Bank basin is limited to the 2000 Stormwater Master Plan adopted 309-list projects. Therefore, the purchase of 298 Taybin Road NW was illegally funded.

Sincerely,



E.M. Easterly

¹ Mr. Atchison offered a revision to his May 6th memo by correcting the original cited page reference numbers to page 5-8 of the 2000 Stormwater Master Plan. That plan page contains a defined 5% pipes and ditches conveyance allowance rather than a general 5-percent conveyance allowance.

Item B-3

To: 2020-2021 Salem Budget Committee Via Josh Eggleston, Salem Budget Officer

From: E.M. Easterly

Date: May 13, 2020

Mr. Atchison's written testimony to the Salem Budget Committee quoted below offers responses to three statements from my earlier submission and request to the Budget Committee. In summary, his responses appear to be based upon a flawed application of the Salem Stormwater Master Plan and an incomplete reading of SRC 41.130.

1) Use of SDC capital funds to design a non-SDC project needs to be explained.

"Use of SDC capital funds to design a non-SDC project needs to be explained. The testimony is incorrect that the City has used SDC capital funds for a "non-SDC project." As set forth in ORS 223.307, in order to use SDC revenue for a capital improvement, the improvement (or project) must be included in the applicable "plan," and included in the list of eligible projects required under ORS 223.309 (known as the "309 list"). In this case, the projects that utilized FY19 and FY20 Stormwater SDC revenues were all included within the 5 percent allowance for small projects in the City's stormwater master plan {Interesting claim. The 2019-20 nor the proposed 2020-2021 budget document offer no line item identifying a "5 percent allowance for small projects" nor does that budget document identify a single West Bank basin 309 list project.} and in the City's Stormwater Methodology and 309 list. Mr. Easterly appears to be asserting that all SDC funded projects must be included in the Capital Improvement Plan (CIP). That is incorrect. {I am not. Since the 2019-20 budget document shows no 309 listed project expenditures and I am asserting that stormwater SDC funds must be budgeted for and expended on 309 list projects, I again invite Mr. Atchison to explain why that FY 2019-2020 document budgeted monies (6%) for design and the FY2021 Stormwater budget also budgets 4% of available resources for design purposes.} ORS 223.309 identifies a variety of plans, including a master plan, that fulfill that requirement." {I agree; I believe the City of Salem uses the Master Plan process.}

2) Aggregation of SDC expenditure and revenue estimates into a single fund, the Extra Capacity Facilities Fund (Fund 260) – Request that FY 2021 budget separate out each SDC type into separate funds.

"SRC 41.130 creates the Extra Capacity Facilities Fund and requires all SDC revenue of every type to be deposited into the fund. It also requires separate accounts within the fund for each type of SDC. ORS 294.358 does not require the level of detail sought by the request. {I disagree, and am prepared to offer documentation supporting this point of view.} The City utilizes a fund-cost center accounting structure the segregates each SDC type into a separate cost center. For budgeting purposes, the Extra Capacity Facilities Fund budget is adopted at the Fund level that includes all cost centers. {Yes, it does; I have no problem with this aggregation just as I have no problem with the General Fund aggregation followed by more unit-based details, e.g. Community Development and Building and Safety funds.} As required by Oregon budget law the fund display contains the proposed budget, one prior year budget, and two years of actuals." {The Salem version of this methodology ignores half of the SDC budgeting process. The revenue side of the Extra Capacity Facilities budget identifies the five separate SDC accounts budgeted receipts but then fails to offer expenditure budgets or beginning/ending balances for the same five SDC accounts. These contrasting budget information entries are shown on the next page. My request to the budget officer and the budget committee is that the expenditure side of SDC budgeting match the revenue portion of the SDC budget. The proposed 2020-2021 budget does that for Community Development and Building & Safety.}

3) Claim that use of stormwater SDCs for purchase of property at 298 Taybin Road violated ORS 223.307.

“As discussed above, ORS 223.307 requires any capital project that is funded with SDCs be included in the applicable plan and included in the City’s 309 list. In this case, the acquisition was included within the 5 percent allowance for small projects as described in the Stormwater Master Plan, page 4-5, and included within the 5 percent allowance for small projects in the City’s Stormwater Methodology Report and 309 list, Section 2, page 14, and on Table 3, page 15.” {I dispute and challenge this explanation offered by Mr. Atchison. The Stormwater Master Plan he cites is only an unadopted draft.}

Stormwater Budget Revenue Entry

City of Salem Budget System Development Charges (SDCs) Fund FY 2021

SDCs Fund Resources

Account	Description	Budget FY 2018	Actual FY 2018	Budget FY 2019	Actual FY 2019	Budget FY 2020	Mgr Rec FY 2021
32235	SDC STORMWATER IMPROVEMENT	250,000	481,133	250,000	604,009	250,000	500,000

Page 351

Stormwater Budget Expenditure Entry

2020-2021

Resources	Allocation
\$2,051,540	
Administration	\$225,000 11%
Design	\$77,370 4%
Reimbursement	\$126,910 6%
Not Allocated	\$1,622,260 79%

Pgs 211/212

There is no “one prior year budget, and two years of actuals” included in the Salem Stormwater SDC expenditure budget entry from budget pages 211-12.

Again, I ask that Salem Budget Officer and the Salem 2020-2021 Budget Committee modify SDC budget information so that Stormwater SDC expenditures do show “one prior year budget, and two years of actuals”.

Item B-4**775 Fir Gardens St. NW ♦ Salem, OR 97304**emeasterly@comcast.net ♦ 503-363-6221

May 8, 2020

Mr. Daniel Atchison, City Attorney
 City of Salem
 555 Liberty St. SE
 Salem, OR 97301-3513

Dear Mr. Atchison;

Thank you for providing the administration's response to my written testimony and request to the FY 2020-2021 Salem budget committee. Your summary of the 309 list application regarding System Development Charge fees and eligible projects is appreciated. Your reference to the yet to be adopted 2019 Stormwater Master Plan which will replace the September 2000 Stormwater Master Plan when adopted by Council is illuminating. Illuminating because your arguments based upon the non-adopted policies of a "draft" Stormwater Master Plan are legally irrelevant. You cite ORS 223.307 which stipulates the following:

"(4) 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)."

I support those SDC obligations, but I do not accept the yet to be adopted draft and financially more flexible 2019 Salem Stormwater Master Plan until it is adopted by Council. Accordingly, Council decisions relating the expenditure of SDC funds must conform to the 2000 Salem Stormwater Master Plan. There is no five-percent small conveyance improvement allowance in the current Stormwater Master Plan.

Thank you also, Mr. Atchison, for citing SRC 41.130. The prescribed behavior is clear. The code requires:

"The Finance Officer or the Finance Officer's designee shall establish and keep such accounts as may be necessary showing the total SDC revenues collected for water, wastewater, transportation, parks and recreation, drainage and flood control and the projects that are funded by SDC revenues, and shall provide an annual accounting, to be completed by January 1 of each year, showing amounts collected, projects funded by, and the extent to which each project was funded with SDC revenues during the previous fiscal year. "

The FY 2018-2019 CAFR does not offer evidence in support of SRC 41.130. You state that "Extra Capacity Facilities Fund ... requires separate accounts within the fund for each type of SDC." I fully agree, but those separate accounts are not disclosed in the 2019 CAFR.

Previously I challenged the City's failure to properly address the budgetary accounting of the five Systems Development Charges¹ (SDC) funds adopted by the City of Salem. That omission is further

compounded by the past financial report (2019) which contains few references to the five SDC funds²

¹ (A) Water supply, treatment and distribution. (B) Wastewater collection, transmission, treatment and disposal.
 (C) Drainage and flood control; [Salem: Stormwater] (D) Transportation; or
 (E) Parks and recreation.

²The current Salem budgeting process anticipates SDC revenue individually for the five funds but then fails to identify fund beginning /ending balances or expenditures for each of the five funds.

in the Salem Consolidated Annual Financial Report (CAFR).

The initial SDC CAFR reference is offered below

“Capital improvement financing strategy – The Capital Improvement Program (CIP) plans for the acquisition or construction of capital improvements. The CIP is updated annually by staff and is made available for review and comment to neighborhood associations and through public hearings prior to Council adoption. This ongoing process identifies the capital needs of the community, the funding sources to pay for those needs, and schedules improvements according to the City's ability to pay. The primary result of the CIP is the identification and tracking of infrastructure needs, which consist of utility system, street, park, airport, and other needs such as municipal facilities and equipment. In addition to bonded debt and loans, other funding sources such as utility revenue and systems development charges (SDC's) also pay for capital improvements within the City.”

Page 3 2019 Salem CAFR

There is one further CAFR reference to SDC funds.

Extra Capacity Facilities

This fund accounts for street expansion, and parks development and expansion. Financing is provided primarily from systems development charges levied against developing properties.

Page 111 2019 Salem CAFR

The CAFR description above cites just two SDC fund accounts – streets and parks. There is no reference to the three other Salem SDC funds – water, sewer or stormwater. More importantly, the CAFR states the funds are funded “... from systems development charges levied against developing properties.” That is, each SDC account in the language of the CAFR is a fund and, therefore, in the FY 2020-2021 budget shall comply with ORS 294.358.

I must acknowledge that the use of the term “fund”³ confused me. It was only after I recognized that the CAFR not only discusses individual funds but also the aggregation of “fund of funds” that the inadequacy of the SDC funds reporting in the CAFR and budget documents became apparent.

SDC funds appear to be, first, the five individual SDC funds not fully disclosed in the CAFR, second, the agglomeration of the SDC funds and other funds, e.g. impervious surface stormwater fees, in the “Extra Capacity Facilities” fund and third, the aggregation of the “Extra Capacity Facilities” fund and the “Capital Improvements” fund in the “Utility” fund which summarizes the City of Salem's capital assets and liabilities.

Fortunately, the CAFR acknowledgment on the next page defines the special character of SDC funds. The SDC funds, though not individually acknowledged or identified as required by SRC 41.130, are apparently subsumed under the restricted Extra Capacity Facilities fund as stipulated by SRC 41.130. See Net position next page.

³ **What is a fund?** A fund is a fiscal and accounting entity with self-balancing accounts set aside to carry on a specific activity or to meet certain objectives in accordance with a specific regulation. The requirements and resources of a fund must always balance.

Depending on the size and complexity of your local government and the services it provides, your district may also have a number of special funds. The most common reason for establishing a special fund is to account for a revenue source whose use is limited to a particular kind of expenditure. Examples include: debt service funds, construction funds, reserve funds, street funds, water funds, and sewer funds.

Page 3 Local Budgeting in Oregon

L. Net position

The government-wide and proprietary fund statements utilize a net position presentation. Net position is categorized as net investment in capital assets, restricted, and unrestricted.

Net investment in capital assets reflects the portion of net position invested in capital assets less any outstanding balances of related debt, plus related deferred outflows. The related debt is the debt less any unspent proceeds.

Restricted net position represents liquid assets that have third party (statutory, bond covenant, or grantor) limitations on their use. The City typically uses restricted assets first, as appropriate, but reserves the right to defer the use thereof to a future project or acquisition. The following table presents the calculation of net position and components thereof.

<u>Calculation of Net Position</u>			
	<u>Governmental</u>	<u>Business-type</u>	
	<u>Activities</u>	<u>Activities</u>	<u>Total</u>
Restricted:			
Capital projects			
Capital improvements	85,516,255	37,671,221	123,187,476
Extra capacity facilities	14,396,520	-	14,396,520

Page 89 2019 Salem CAFR

In effect, the 2019 CAFR appears to have accounted for millions of City of Salem SDC funded revenues and expenditures by consolidating them under “Extra Capacity Facilities” without ever showing each of the separate SDC fund Beginning / Ending balances, Revenues and/or Expenditures as stipulated by ORS 294.358.

These individual SDC funds are relevant because each fund revenue is allocated to a specific project list under current system development charge master plans. Whether the SDC fund expenditures are accurately directed to the adopted City of Salem SDC 309 project lists is difficult to trace. As the Net position above explains: “[The City] reserves the right to defer the use thereof to a future project or acquisition.” Does such a position mean SDC funds not utilized for a 309 listed project can subsequently be legally used for an unlisted or underfunded future project even though all projects eligible for SDC funding on a 309 list have not been completed?

It is misleading for Salem to state SRC funds are restricted but then lump them into the fund of funds, “Extra capacity facilities”, without indicating that each of the SDC funds have specific restrictions defined by ORS Chapter 223 and the five SDC master plans. For example, is the City of Salem permitted to use Park SDC fees to fund an identified 309 listed street expansion or transportation project?

I ask that this past aggregation of SDC funds⁴ be amplified in the 2019-2020 CAFR. Fiscal

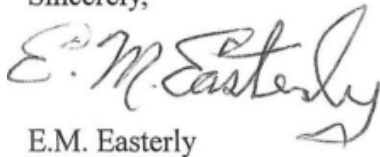
⁴**Special revenue fund** Special revenue funds should be set up for dedicated local option tax levies, specific purpose grants and **other revenues when required by statute**, charter provision, or the terms of a grant. The number of such funds depends upon the activities of the local government and how it is funded. Page 19 Local Budgeting Manual
https://www.oregon.gov/dor/forms/FormsPubs/local-budgeting-manual_504-420.pdf

There is nothing in the language offered above to suggest that Salem System Development Charge fees, i.e., a “Special revenue fund” are exempted under the provisions of ORS Chapter 223 from the full budgetary review and scrutiny detailed in the provisions of ORS Chapter 294, including “Fund balance”. eme

transparency obliges the CAFR to report revenues, expenditures, and changes in fund balances for the individual SDC funds with the same precision that the CAFR offers, for example, for the Airport fund and/or the Building & Safety fund. Yes, SDC accounts may be subsumed under Extra Capacity Facilities fund, just the Building & Safety fund as an element of the General Fund.

Again. I request that the 2020 CAFR address the less than transparent reporting of SDC funds just as I previously requested that the FY 2021 Budget Committee appropriately prepare individual SDC fund budget pages.

Sincerely,

A handwritten signature in black ink, appearing to read "E.M. Easterly", with a stylized flourish at the end.

E.M. Easterly

Copy: Mr. Steve Powers, Salem City Manager

Mr. Robert Barron, Salem Chief Financial Officer

Mr. Josh Eggleston, Salem Budget Officer

Salem FY 2020-2021 Budget Committee via Josh Eggleston

Ms. Katherine R. Wilson, Auditor
GROVE, MUELLER & SWANK, P.C.

Item B-5

775 Fir Gardens St. NW ♦ Salem, OR 97304
emeasterly@comcast.net ♦ 503-363-6221

April 27, 2020

Mr. Robert Barron, Chief Financial Officer
 City of Salem
 555 Liberty St. SE
 Salem, OR 97301-3513

Dear Mr. Barron,

Last week I thanked you for your timely response to my questions relating to the Salem Stormwater Systems Development Charges (SDC) budget and expenditures.

Whoever prepared the response on your behalf is clearly not familiar with ORS 223.307.¹

It also appears that those individuals who created the CIP budget over the last three years are equally in the dark. To quote from your email: "There are no SDC funded stormwater projects in FY 2021-25 CIP." The same is true for the FY 2019-23 and FY 2020-24 CIP budgets. Without a Stormwater SDC project in the CIP budget no new Stormwater SDC capital funds may be expended on a capital project.

Since Stormwater SDC revenue must specifically be spent on 309² listed projects and/or reimbursements for approved stormwater capital improvement projects I hereby challenge³ both the FY 2019-20 expenditure of stormwater SDC revenue on a non-309 listed purchase and the rather fragrant false declaration that "The "Stormwater – Unspecified" project is the budget that is used ... for mid-year projects." Yes, mid-year projects may well be identified, but such projects are not eligible for SDC funding until they are included in a five-year CIP budget. For City staff to authorize to the Salem City Council as they did on November 26th, 2019 exemplifies a misunderstanding of ORS 223.307.

I ask that you share my ORS 223.302 appeal of the November 25, 2019 Council expenditure of Stormwater SDC funds contained in this letter with relevant members of the Salem administration.

In addition to challenging the City's FY 2020 utilization of the "Stormwater – Unspecified" I also challenge the "Stormwater – Design and Analysis budgeted expenditure amount.

How does the City justify the expenditure of capital funds on Design and Analysis when there are no CIP authorized Stormwater SDC funded projects? ORS 223.297⁴ makes it abundantly clear any

¹ **ORS 223.307 Authorized expenditure of system development charges**

(4) 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).

² **223.309 Preparation of plan for capital improvements financed by system development charges: modification.**

(1) Prior to the establishment of a system development charge by ordinance or resolution, a local government shall prepare a capital improvement plan, public facilities plan, master plan or comparable 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 improvement fee and the estimated cost, timing and percentage of costs eligible to be funded with revenues from the improvement fee for each improvement.

³ **ORS 223.302 System development charges**

(2) Local governments shall adopt administrative review procedures by which any citizen or other interested person may challenge an expenditure of system development charge revenues. Such procedures shall provide that such a challenge must be filed within two years of the expenditure of the system development charge revenues.

⁴ "... and to establish that the charges may be used only for capital improvements"

	Project No.	Budget / CIP Year	Neighborhood and Ward	Sources of Funding				Funding Notes
				Stormwater Rates	SDC Fees	Other Agencies	Total Funding	
9. Airport Stormwater Improvements and Curb Realignment	717206	FY 2019	SESNA SEMCA Wards 2, 3	387,460	-	-	387,460	
10. Salem Police Station Stormwater Improvements	718204	FY 2019	CAN-DO Ward 1	460,290	-	-	460,290	
				\$ 1,093,020	\$ -	\$ -	\$ 1,093,020	
Developer Reimbursements								
11. Storm Capacity Improvements - Developer Reimbursement			Citywide / All Wards	\$ -	\$ 126,910	\$ -	\$ 126,910	
				\$ -	\$ 126,910	\$ -	\$ 126,910	
General								
12. Stormwater - Unspecified	998654 998811		Citywide / All Wards	\$ 312,040	\$ 1,329,210	\$ -	\$ 1,641,250	
13. Opportunity Grant	998656		Citywide / All Wards	-	-	500,000	500,000	Various
14. Stormwater - CIP Management	998653		Citywide / All Wards	62,340	-	-	62,340	
15. Stormwater - Design and Analysis	998655 998672		Citywide / All Wards	74,890	97,370	-	172,260	
16. Stormwater - SDC Administration	998671		Citywide / All Wards	-	29,340	-	29,340	
				\$ 449,270	\$ 1,455,920	\$ 500,000	\$ 2,405,190	
Total Funding by Source				\$ 3,775,840	\$ 1,582,830	\$ 1,800,000		

design and/or analysis expenditure must be associated with an authorized Stormwater capital project.

I also challenge the adequacy of the FY 2020 Stormwater SDC expenditure budget for failing to include prior year budget and actual expenditures. While the budget document does an excellent job of providing Stormwater some revenue information, apparently City staff does not believe that equivalent Stormwater SDC expenditure information is relevant and necessary to comply with ORS 223.302(2).

Account	Description	Budget FY 2017	Actual FY 2017	Budget FY 2018	Actual FY 2018	Budget FY 2019	Mgr Rec FY 2020
32210	SDC SEWER - KEIZER	\$ 20,000	\$ 18,184	\$ -	\$ 26,526	\$ -	\$ -
32212	SDC SEWER - EAST SALEM DISTRICT	4,000	6,249	-	5,466	-	-
32218	SDC WATER IMPROVEMENT	1,300,000	1,687,355	1,000,000	2,371,781	1,000,000	1,400,000
32226	SDC SEWER IMPROVEMENT	950,000	1,248,146	900,000	1,728,992	1,443,000	2,260,000
32228	SDC PARKS	1,400,000	1,644,386	1,740,860	3,275,352	1,735,000	2,150,000
32231	SDC TRANSPORTATION IMPROVEMENT	850,000	1,313,020	1,013,000	1,947,289	1,400,000	1,777,560
32235	SDC STORMWATER IMPROVEMENT	250,000	342,546	250,000	481,133	250,000	250,000

I acknowledge that the FY 2020 Stormwater expenditure budget offers summary information in the format offered below.

But missing from the schedule offered above is any explanation as to why budget information of FY2017 and FY 2018 are not included as they were for the Stormwater revenue spreadsheet previously listed. Also missing is a detailed review of (a) the 4 expenditure categories⁵ and (b) an explanation for the apparent budget increases in FY 2019 and FY2020.

Your April 23rd document cited the CIP project selection process stated:

"As part of the CIP process, the Stormwater CIP committee will continue to identify projects that may have SDC funding and include them in the 5-Year CIP as appropriate based on priority and ranking. ... The Stormwater CIP committee will continue to identify projects throughout

⁵ Stormwater – Developer Reimbursement
Stormwater – Unspecified
Stormwater – Design and Analysis
Stormwater – SDC Administration

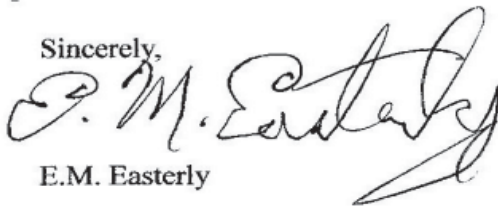
the year and SDC eligibility will be reviewed.”

Who are the members of the Stormwater CIP committee and why has that committee not applied Stormwater SDC revenue to CIP identified Stormwater SDC funded expenditure projects? The FY 2020 Stormwater expenditure budget shows Developer Reimbursement funding and only a lump sum “Unspecified” amount, but no CIP Stormwater 309 project expenditure as required by ORS 223.307. Why?

Mr. Barron, I recognize most of these issues predate your joining the City of Salem administration. In so far as the FY 2021 budgeting process is under your supervision, I ask that you take seriously efforts to update the Salem budget building process so that it conforms to Oregon budgetary rules. The full identification of the Salem Stormwater SDC expenditure equivalents to the full identification of Stormwater SDC revenue budgets and actual monies received in past years is required because the Stormwater SDC is a separate and unique fund which must include a transparent expenditure budget. This same expenditure budgeting information is required of all five⁶ eligible SDC categories.

Finally, it is important that the City acknowledge its fiduciary duty to the citizens of Salem and adhere to budgeting processes that conform to Oregon Revised Statutes. I specifically ask that you require future Stormwater SDC fund proposed budget documents conform to ORS294.358.

Sincerely,



E.M. Easterly

⁶ (A) Water supply, treatment and distribution.
(B) Wastewater collection, transmission, treatment and disposal.
(C) Drainage and flood control; [Salem: Stormwater]
(D) Transportation; or
(E) Parks and recreation.

775 Fir Gardens St. NW ♦ Salem, OR 97304

emeasterly@comcast.net ♦ 503-363-6221

April 21, 2020

Mr. Robert Barron, Chief Financial Officer
City of Salem
555 Liberty St. SE
Salem, OR 97301-3513

Dear Mr. Barron,

I have questions regarding the Stormwater SDC fund and the Utility Stormwater CIP budgets.

I note that the two CIP budgets 2019-23 and 2020-24 contain no budgeted projects funded by Stormwater SDC revenue. Why?

What was the Stormwater SDC fund audited balance as of July 1, 2018?

What was the Stormwater SDC fund audited balance as of July 1, 2019?

What is the projected Stormwater SDC fund approximate balance as of June 30, 2020?

What Stormwater SDC funded projects are contained in the 2021-2025 proposed CIP Stormwater project list?

What portion of Stormwater SDC funds are allocated to fund the annual Stormwater City of Salem capital projects?

Since **no** Stormwater SDC funds beyond planning and fund administration were budgeted for expenditure in the fiscal 2019-2020 budget, please explain how City Council could authorize a capital expenditure of Stormwater SDC funds in the amount of \$401,764.52 in fiscal 2019-20.

I am aware of the Annual 2019-20 Budget Document includes an “unspecified” Stormwater SDC expenditure allocation amount of \$1,329,210 at page 197. But I do not understand how Stormwater SDC funds can be expended on either an unbudgeted project or an unbudgeted capital acquisition.

It is my impression that under Oregon budgetary rules, even contingency funds must be incorporated into an operational budget via the budget modification process before such funds can be expended.

When did the Salem City Council execute a FY2020 Stormwater SDC Capital Improvement Program budget modification?

Sincerely,

E.M. Easterly
503-363-6221

On April 23 Mr. Barron provided the responses on Page 18 via email.

From: Robert Barron
Sent: Thursday, April 23, 2020 10:27 AM
To: E Easterly
Subject: RE: FY 2020 query

Mr. Easterly,

I have received the following answers to the questions that you posed in your April 21st email. I have attached the agenda from the November 25, 2019, City Council meeting referenced below. The meeting agenda has hyperlinks in item 3.3b. to the supporting documents for the purchase and sale agreement in question.

1. I note that the two CIP budgets 2019-23 and 2020-24 contain no budgeted projects funded by Stormwater SDC revenue. Why? CIP projects are developed throughout the year by staff as they assess operational and system needs, review long range plans, and receive resident input. Once projects are identified, they are reviewed and scored. After scoring is complete, the projects are ranked and prioritized for inclusion in the CIP based on funding availability. Projects that are currently in the 5-Year plan do not have SDC eligibility. As part of the CIP process, the Stormwater CIP committee will continue to identify projects that may have SDC funding and include them in the 5-Year CIP as appropriate based on priority and ranking.
2. What was the Stormwater SDC fund audited balance as of July 1, 2018? \$1,737,875.47
3. What was the Stormwater SDC fund audited balance as of July 1, 2019? \$1,211,073.28
4. What is the projected Stormwater SDC fund approximate balance as of June 30, 2020? \$1,146,490
5. What Stormwater SDC funded projects are contained in the 2021-2025 proposed CIP Stormwater project list? There are no SDC funded stormwater projects in FY 2021-25 CIP. The Stormwater CIP committee will continue to identify projects throughout the year and SDC eligibility will be reviewed.
6. What portion of Stormwater SDC funds are allocated to fund the annual Stormwater City of Salem capital projects? Currently, \$927,210 is available to allocate to eligible stormwater projects.
7. Since **no** Stormwater SDC funds beyond planning and fund administration were budgeted for expenditure in the fiscal 2019-2020 budget, please explain how City Council could authorize a capital expenditure of Stormwater SDC funds in the amount of \$401,764.52 in fiscal 2019-20. City Council approved the purchase and sale agreement during the November 25, 2019 Council Meeting. Staff Report File No. 19-538.
8. I am aware of the Annual 2019-20 Budget Document includes an “unspecified” Stormwater SDC expenditure allocation amount of \$1,329,210 at page 197. But I do not understand how Stormwater SDC funds can be expended on either an unbudgeted project or an unbudgeted capital acquisition. The “Stormwater – Unspecified” project is the budget that is used for costs exceeding project estimates and for mid-year projects. City Council approved the purchase and sale agreement during the November 25, 2019 Council Meeting, Staff Report File No. 19-538.
9. It is my impression that under Oregon budgetary rules, even contingency funds must be incorporated into an operational budget via the budget modification process before such funds can be expended. When did the Salem City Council execute a FY2020 Stormwater SDC Capital Improvement Program budget modification? The budget modification was completed through the Staff Report process, approved by the City Council on November 25, 2019.

Best regards,
Robert Barron, CPFO
Chief Financial Officer

Amy Johnson

From: Brian Hines <brianhines1@gmail.com>
Sent: Wednesday, July 08, 2020 3:38 PM
To: CityRecorder
Cc: citycouncil
Subject: Advance testimony for July 13 appeal of Taybin Road purchase

Categories: Follow-up

Since E.M. Easterly's appeal of the decision to use stormwater funds to acquire the property at 298 Taybin Road NW was rescheduled to the July 13 City Council meeting from June 22, I'm resubmitting testimony in the form of a June 18 blog post regarding this issue. I've noted that files related to the June 22 agenda item have been deleted, which included public testimony/comments.

Here's a link to the blog post, which I've copied in below.

<https://hinessight.blogs.com/salempoliticalsnark/2020/06/shady-stuff-associated-with-salem-city-council-agenda-item.html>

This is how I introduced the post on Facebook.

Next Monday the City Council will hear an appeal involving purchase of some Taybin Road property by the City of Salem. What's most interesting about this is that the property is earmarked for future Marine Drive construction.

But I've been told that the City Council hasn't authorized purchase of right-of-way for Marine Drive in the Taybin Road area.

So there's reason to believe that Peter Fernandez, the Public Works Director, paid a seller double the market value of a house that used to be on the property in the hope a Third Bridge would come back to life, requiring Marine Drive to be built adjacent to Wallace Marine Park, the location of the property.

Shady stuff associated with Salem City Council agenda item

By and large, I'm no conspiracy theorist. But I'm always ready to believe that when it comes to goings-on with the City of Salem, what appears innocent and boring at first glance may be the tip of a non-innocent non-boring "iceberg" below the surface.

So I said "sure" when someone asked if I wanted to learn the backstory behind [an appeal of a Systems Development Charge expenditure](#) for the purchase of a house at 298 Taybin Road NW in West Salem. The appeal is on the [agenda of the June 22 Salem City Council meeting](#).

Before getting to the backstory, here's the first outrageous thing that caught my eye when I looked at the appeal agenda item. The staff recommendation to reject the appeal comes from Peter Fernandez, the Public Works Director -- who also happens

to be the person at the center of the controversial decision to purchase the Taybin Road property.

Sure, this is common in government bodies. The person who did something that you're upset with, and want to appeal, turns out to be the person who will initially review the appeal. But just because a practice is common doesn't make it right.

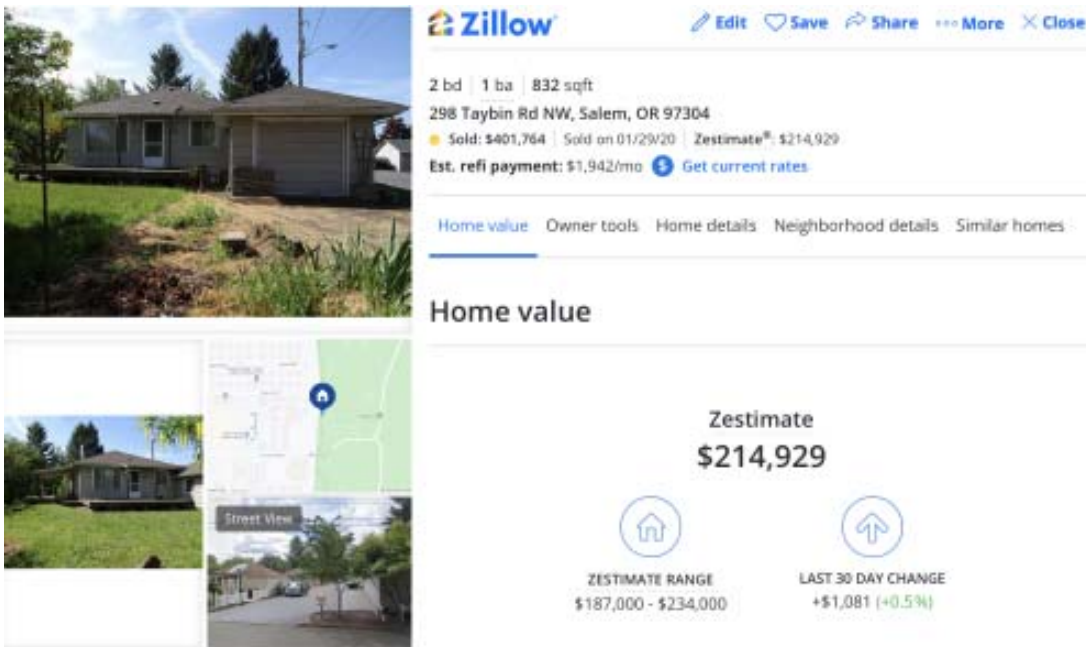
Hopefully the members of the City Council understand that when they see a staff analysis recommending denial of an appeal, often, if not usually, there is a decided conflict of interest at play.

Another outrage is that I've been told the City Recorder will not allow the appellant, E.M. Easterly, to appear for his hearing. So the City staff get to address the Council using video but Easterly can only submit written testimony (currently City Council meetings are virtual, being streamed online, with no in-person audience).

This seems crazy. Zoom can handle dozens, or even hundreds, of participants. Other city councils are allowing people to testify online. Why isn't the City of Salem doing this?

NEXT DAY UPDATE: Just heard that the City attorney will overrule the City Recorder and will allow Easterly to speak via video. Good news.

At any rate, the appeal to be discussed next Monday involves whether the correct pot of money was used to purchase the house at 298 Taybin Road NW. More correctly, the house that *used to be* at this address, since I was told that Peter Fernandez had it torn down before closing on January 20, 2020.



Zillow Edit Save Share More Close

2 bd | 1 ba | 832 sqft
298 Taybin Rd NW, Salem, OR 97304
Sold: \$401,764 | Sold on 01/29/20 | Zestimate®: \$214,929
Est. refi payment: \$1,942/mo | Get current rates

Home value | Owner tools | Home details | Neighborhood details | Similar homes

Home value

Zestimate
\$214,929

ZESTIMATE RANGE
\$187,000 - \$234,000

LAST 30 DAY CHANGE
+\$1,081 (+0.5%)

The City of Salem paid \$402,000 for the 832 square foot house, which [Zillow estimates was worth \\$215,000](#). (City paid \$375,000 for the house and \$26,765 to have the house demolished.) I've heard that attorney Jim Vick bought the house for about \$200,000 and resold it to the City for close to twice the price within six months, a pretty darn

good return on investment. [NOTE: initially I had a "Bob Vick" as the seller of the property, but someone has sent me documentation that it was Jim Vick, also an attorney.]

(The City Council might want to ask staff why the price paid for this house was so high.)

A [staff analysis prepared for the appeal](#) says why the house was purchased. I've **boldfaced** a provocative part.

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.

That mention of Marine Drive NW leads into the most interesting part of the backstory, as expressed in the following theory.

A key question is why Peter Fernandez, the Public Works Director, authorized purchase and removal of the house, possibly using the wrong source of funding. Well, maybe because the house was in the path of an approach to the Third Bridge that the Chamber of Commerce was promising would be resurrected with a record amount of campaign spending in the May 2020 City Council primary election.

However, the election ended up with the same 6-3 progressive majority on the City Council, which meant that, for the foreseeable future, the dream of the Third Bridge that still holds sway among key City staff, the Mayor, and several city councilors will not come to pass.

Yet in October 2019 that dream seemed like it could become reality, if enough progressives were defeated in the upcoming 2020 City Council elections to turn a 6-3 majority into at least a 5-4 minority.

What I've been told is that on June 10, 2019, the City Council directed City staff *not* to buy right-of-way that includes 298 Taybin Road when it adopted a motion from Councilor Kaser to buy property for Marine Drive from 5th Ave and Cameo Street to River Bend Road.

So the nearly \$3.6 million of 2008 Streets and Bridges Bond Funds could not be used to buy 298 Taybin. Thus, goes the theory, Peter Fernandez reached into his bag of funding tricks and picked a source of funding that, according to the E.M. Easterly appeal, is not appropriate.

Further, the [Proposed Budget Book 1](#), page 204, that is up for final approval at Monday's City Council meeting still states that the approximate \$3.6 million carryover

funding for Marine Drive is to initiate street improvements from Glen Creek to Cameo, which is counter to Kaser's adopted motion.

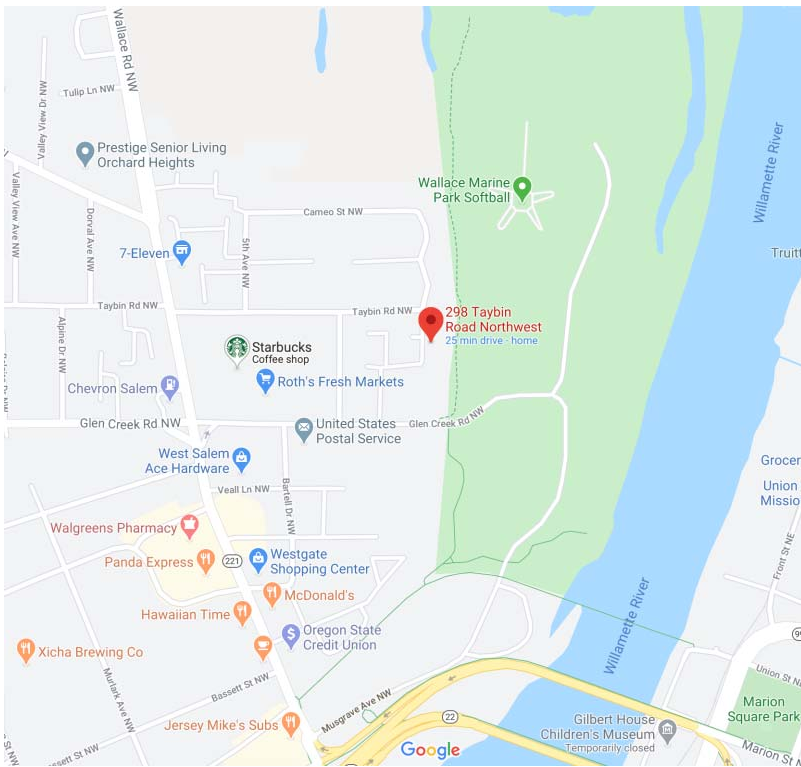
This seems to show that City of Salem staff really want Marine Drive to go east of Pioneer Village and along the edge of Wallace Marine Park. It is as if those staff either did not notice the City Council decision on June 10, 2019 to purchase Marine Drive Right of Way between 5th Ave and River Bend Road, or they just want to keep ignoring the role of the City Council in setting policy for the City of Salem.

To me, what's most concerning about the purchase of the Taybin Road house is that on June 10, 2019, as the City Council considered what right-of-way to buy for Marine Drive, reportedly the Public Works Director said that the City will buy whatever right-of-way the Council decides on.

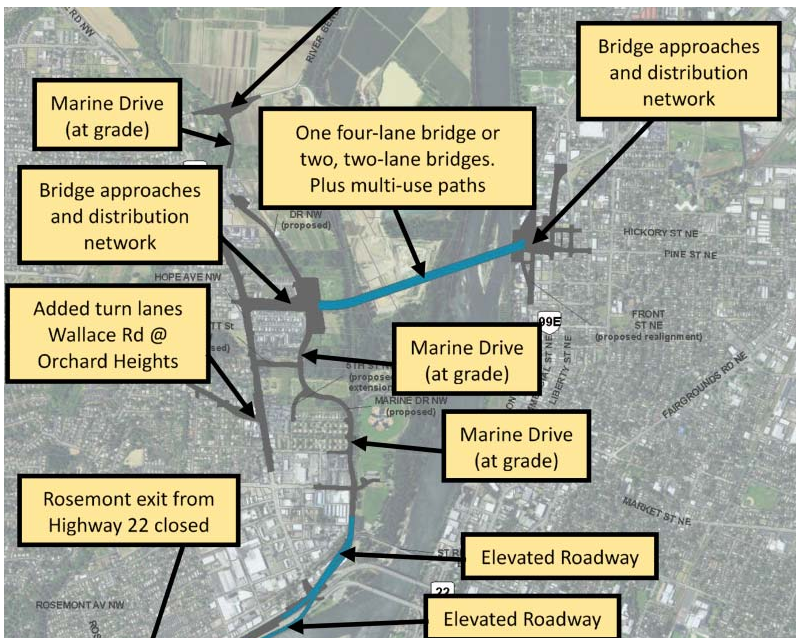
But that's not how it turned out. The City Council picked one route and the Public Works Director bought right-of-way at twice the market value in a different location that had a house on it which could have been available as affordable housing stock if it hadn't been torn down.

Here's some maps that make more clear the issues at stake here.

Below is a screenshot of a Google Maps image, with the Taybin Drive house address shown by the red marker. That address is considerably south of Cameo Drive, which Councilor Kaser's motion said should be the southern edge of the Marine Drive right-of-way acquisition. So why is the Public Works Department buying the Taybin Drive property for a possible future Marine Drive construction?



And here's a screenshot of part of a Salem River Crossing (Third Bridge) planning document that I found on Google Images. You can see that the plan was for bridge traffic to be funneled along Marine Drive, some of which would run close to and parallel to Wallace Marine Park -- right where the Taybin Drive house was located.



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<http://twitter.com/oregonbrian>
www.hinesblog.com (blog)
www.churchofthechurchless.com (other blog)
www.salempoliticalsnark.com (other other blog)
www.brianhines.com (web site)
<https://brianhines.journoportfolio.com> (selection of my writings)