

BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

IN THE MATTER OF DENIAL OF)
THE APPEAL BY E.M. EASTERLY)
REGARDING THE USE OF STORMWATER)
SYSTEM DEVELOPMENT CHARGE (SDC))
FUNDS FOR THE PURCHASE OF REAL)
PROPERTY AT 298 TAYBIN ROAD NW)

ORDER NO. 2020-2 SDC

This matter coming regularly for hearing before the City Council, at its July 13, 2020, meeting, and the City Council, having received evidence and heard testimony, makes the following findings, and adopts the following order denying the appeal by E.M. Easterly regarding the use of Stormwater SDC funds for the purchase of real property at 298 Taybin Road NW.

PROCEDURAL FINDINGS:

- (a) In November 2019, Council approved entering into a purchase and sale agreement for the acquisition of the Taybin property through expenditure of Stormwater SDC funds. The real estate purchase closed in January 2020 for a price of \$401,764.52.
- (b) On May 20, 2020, E.M. Easterly (Appellant) submitted a letter to Council appealing the use of Stormwater funds for the purchase of the Taybin property. Appellant asserts that the Stormwater SDC funds used to purchase the land were not included in the list of eligible projects identified in the current *Stormwater Master Plan* in violation of the limitations described in ORS 223.307.
- (c) On July 13, 2020, the City Council conducted a hearing to receive evidence and testimony regarding appeal of the use of Stormwater SDC funds for the purchase of 298 Taybin Road NW. The public hearing and record were closed on July 13, 2020.
- (d) The City Council conducted deliberations on July 13, 2020, and voted to deny the appeal.

SUBSTANTIVE FINDINGS:

The City Council adopts the following as findings for this decision:

- (a) System development charges are governed by ORS Chapters 223.209 to 223.314. The pertinent sections related to the appeal are found in:
 - 1. ORS 223.307, which defines the authorized expenditures of system development charges and how these expenditures must be identified in adopted plans; and

2. ORS 223.309, which establishes the requirements for preparing and adopting a methodology for capital improvements financed by system development charges.
- (b) 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.
 - (c) 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).
 - (d) 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.
 - (e) Consistent with the requirements of ORS 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).
 - (f) 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).
 - (g) 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). Expenditure of this total allowance is not allocated to individual watershed basins, but is available for use city-wide.
 - (h) In conclusion, the acquisition is consistent with the allowance for small projects identified in Table 3 of the methodology. Therefore, Council finds that the City complied with all applicable state statutes when purchasing the property with stormwater SDC funds.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

The appeal by E.M. Easterly regarding the use of Stormwater SDC funds for the purchase of 298 Taybin Road NW is hereby DENIED.

ADOPTED by the City Council this 27th day of July 2020.

ATTEST:

City Recorder

Checked by: Glenn Davis, PE, CFM