

Deny the appeal brought pursuant to SRC 41.180(c), regarding the use of Stormwater System Development Charge (SDC) funds for the purchase of real property at 298 Taybin Road NW.

SUMMARY:

In November 2019, Council approved acquisition of real property located at 298 Taybin Road NW through expenditure of Stormwater SDC funds. On May 20, 2020, pursuant to SRC 41.180(c), E.M. Easterly (Appellant) submitted a letter to Council appealing the use of Stormwater SDC funds for the purchase of 298 Taybin Road NW. Staff recommends Council deny Mr. Easterly's appeal.

FACTS AND FINDINGS:

Staff's analysis of Appellant's appeal regarding the expenditure of stormwater SDC funds for purchase of 298 Taybin Road NW is included in Attachment 1 and is summarized below:

1. 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.
2. On May 20, 2020, the 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.
3. The eligible project list for Stormwater SDCs as specified in ORS 223.309 is found in Appendix B of the Stormwater SDC methodology. Appellant is correct that the Taybin property acquisition is not a project specifically listed in the project tables in Appendix B. However, Section 2, page 14, of the Stormwater SDC methodology states that costs include a five percent allowance for unspecified but anticipated small system conveyance projects within each basin as included in the Master Plan.
4. The five percent allowance for unspecified projects equals approximately 10 million dollars (in 2000 dollars). The Taybin acquisition is consistent with the allowance for small projects in the methodology.
5. Staff recommends Council reject Appellant's appeal.

On June 1, 2020, staff delivered by email to Mr. Easterly a copy of staff's analysis (Attachment 1), and staff originally scheduled the appeal report to appear before Council on June 22. Appellant acknowledged receipt of the analysis and submitted additional comments in response (Attachments 2 and 3). Appellant requested a public hearing, despite the fact that SRC 41.180(c) does not specify that the Council is required to conduct a public hearing in order to render a decision regarding appeal. In order to conduct a public hearing as requested by the applicant, the appeal date before

Council was rescheduled to July 13, 2020.

Regarding the Appellant's additional comments, the majority of Appellant's response is not pertinent to the subject appeal with one exception. Appellant asserts that the Taybin acquisition expenditure exceeds the five percent allowance for unspecified projects within West Bank Basin. Neither the Stormwater Master Plan nor the 309 List limits the five percent allowance to one individual basin, so there is no basin-specific limit on the expenditure of that allowance. Appellant's response does not change staff's recommendation to deny the appeal.

If City Council denies the appeal consistent with the staff recommendation, staff will return to Council with an order for Council's adoption. Pursuant to SRC 41.180(c), if Council determines that there has been an improper expenditure of SDC revenues, then Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the SDC account or fund from which it was spent.

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 per the *Salem Transportation System Plan*. The Taybin property is suitable for stormwater management facilities because it 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. Given its immediate planned use for stormwater management facilities, staff recommended use of Stormwater SDC 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.

Robert D. Chandler, PhD, PE
Assistant Public Works Director

Attachments:

1. Staff Analysis of appeal of uses of stormwater SDC funds for the purchase of real property at 298 Taybin Road NW (dated June 2, 2020)
2. Letter to Salem City Council from E.M. Easterly titled "West Bank Basin Stormwater SDC small conveyance funds land purchase appeal Document #2" (dated June 12, 2020)
3. Letter to Salem City Council from E.M. Easterly titled "Appeal of FY 2019 2020 expenditure of Stormwater SDC revenue Document # 3" (dated June 12, 2020)
4. Mr. Easterley's Response Document 4
5. Written Testimony 1