## CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

# **Study Session Worksheet**

Presentation Date: July 30, 2013 Approx Time: 1:30p.m. Approx Length: 30 minutes

Presentation Title: Deliberation Regarding the Acceptance of an Easement

Department: Department of Transportation and Development

Presenters: Barbara Cartmill, Acting Director & Chris Storey, County Counsel

Other Invitees: Amanda Keller, Attorney; Kath Rose, Right of Way Agent

## WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Determine whether Clackamas County, through its Department of Transportation and Development (DTD), should accept an easement for storm drainage facilities located on the WinCo, Inc. property.

#### **EXECUTIVE SUMMARY:**

WinCo Foods, LLC, contacted Clackamas County in 2011 to consolidate certain easements on its property, some held by the County generally and some held by Clackamas County Service District No. 1. During this process, WinCo requested the County, through its Department of Transportation and Development, take a storm drainage easement covering two 72" diameter pipes holding Phillips Creek that run underneath their property up to and under ODOT's 82<sup>nd</sup> Ave. In the mid-1980's, the Development Agency constructed the pipelines to move the creek underground and make the property developable.

Staff engaged in significant research, but was unable to locate any storm drainage easements for the pipes holding Phillips Creek on WinCo's property. WinCo has been unable to provide any documentation that demonstrates the County accepted responsibility for the pipelines. Storm drainage easements on the parcel adjacent to WinCo's, under which the pipes are also located, contain explicit language specifically releasing the County from any obligation to maintain or repair the pipes. Additionally, an agreement signed by WinCo's predecessor, Cub, includes non-exclusive reciprocal easements for storm sewer lines, including responsibility for maintenance, repair and replacement. While not definitive proof of landowner responsibility, it reveals a certain level of awareness and acceptance of private responsibility for the storm water system on the property.

As a matter of practice, when the Development Agency is involved in a construction project, an alternate body is identified to perform maintenance, due to the fact that the Agency lacks a maintenance arm capable of performing the required work. Regardless, the County has a policy of not providing maintenance to infrastructure on private property. The storm drainage facilities are not associated with any County road, were not required for a County road project, nor were they a dedication requirement as a condition of approval for a land use development. WinCo's proposed easement covers a storm drainage facility on a private parcel that benefits private development, with no other association to County roads.

Overall, we have a property that was made developable through an investment by the Development Agency in the 1980s and potentially expensive maintenance and replacement obligations may be necessary in the future. Winco has asserted that it is the County's responsibility. The County, after a diligent and lengthy search, has not found any dispositive document, but has strong circumstantial evidence that the County would not have accepted responsibility at the time. Further, no current source of funds is available to support the obligations associated with easement acceptance.

## FINANCIAL IMPLICATIONS (current year and ongoing):

In the short term, the cost may be minimal whether the County accepts or rejects the easement. However, if the County retains an easement for the storm drainage facility, it could result in significant financial liability in the future if it becomes damaged or requires repair. Further, accepting the easement would also establish a practice of maintaining infrastructure on private property, which could result in a significant cost to the County.

#### **LEGAL/POLICY REQUIREMENTS:**

N/A

## PUBLIC/GOVERNMENTAL PARTICIPATION:

N/A

#### **OPTIONS:**

- Do Not Accept Easement
  - Pros: No short term cost.
  - Cons: Potential litigation with associated risk due to lack of concrete documentation; Possibility that if storm drainage pipes incur damage or need repair that WinCo would look to the County, which could ultimately be deemed responsible.
- Accept Easement
  - o Pros: Avoid possibility of litigation; Allows County to plan ahead for future costs.
  - <u>Cons</u>: Significant potential future cost; Risk of additional claims for County involvement in infrastructure on private property.

#### **RECOMMENDATION:**

ALIDMITTED DV.

Based on County policy and the supporting documentation available, staff respectfully recommends that the County not accept the storm drainage easement requested by WinCo Foods, LLC.

SUBMITTED DT:			
	h.	Barbara Carpon	úl
Division Director/Head Approval			
Department Director/Head Appro	val_		
County Administrator Approval _			

For information on this issue or copies of attachments, please contact Kath Rose @ 503-742-4713

# Fiscal Impact Form

RESOURCES:  Is this item in your current work plan and budget?
☐ YES X NO
START-UP EXPENSES AND STAFFING (if applicable): N/A
ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable): N/A
ANTICIPATED RESULTS:

## **COSTS & BENEFITS:**

Costs:		<u> </u>				
Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
Total Start-up Costs Ongoing Annual Costs				\ \\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\		
Benefits/Savings:						
Benefits/Savings:	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	Hours					TOTAL
<u> </u>						TOTAL





