

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: July 8, 2014 **Approx Start Time:** 8:30 a.m. **Approx Length:** 60 Min

Presentation Title: Gladstone Library Proposal – Additional Discussion

Department: BCS, County Counsel

Presenters: Gary Barth, Chris Storey, Doris Grolbert

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Direction from the Board regarding the transition of the Oak Lodge Library to the City of Gladstone.

EXECUTIVE SUMMARY:

This discussion is a continuation of the discussion held July 1, 2014 at 10:30am. Please see prior staff report for background details.

FINANCIAL IMPLICATIONS (current year and ongoing):

Gladstone is requesting \$1,000,000 from the general fund and \$1,375,000 from the Oak Lodge Library reserve account.

LEGAL/POLICY REQUIREMENTS:

Please see attached memorandum regarding legal issues.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Please see prior staff report.

OPTIONS:

Please see prior staff report.


RECOMMENDATION:

Please see prior staff report.

ATTACHMENTS:

Legal Memorandum

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval  _____ Director
County Administrator Approval _____ Administrator



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

MEMORANDUM

Stephen L. Madkour
County Counsel

DATE: July 2, 2014
TO: Board of County Commissioners
Donald Krupp, County Administrator
FROM: Chris Storey, Assistant County Counsel
RE: Legal Implications of Gladstone Library Funding Plan

Kimberley Ybarra
Kathleen Rastetter
Chris Storey
Scott C. Ciecko
Alexander Gordon
Amanda Keller
Nathan K. Boderman
Christina Thacker
Assistants

The Board of County Commissioners requested a legal review of Gladstone's proposed financing plan to construct a new library. Staff materials have already provided background on the efforts to date, so I will focus on the current proposal.

As stated in the Gladstone staff report to the Gladstone City Council, the key elements of the proposed project are a \$6.4 million estimated project cost resulting in a 13-16,000 square foot facility on Portland Avenue, with no City cash contribution to the project.

Per that staff report, emphasis is placed on the fact that no city funds will be used for the project, and in fact the City of Gladstone would cease contributing any money towards its library support. Rather, distributions from the Library District of Clackamas County (the "Library District") would be the exclusive funding mechanism for the operation of the Gladstone Library. The sources of funding for the project are:

- \$1,000,000 from the County general fund (currently subject to an IGA);
- \$1,375,000 in one-time Library District funds (of which \$500,000 is subject to an IGA); and
- \$4,000,000 in debt to be paid from Library District distributions (plus interest).

This plan raises several legal issues that the Board must consider. They include (i) the Board's legal right to object to the plan with respect to the \$1,000,000 in general fund and \$500,000 in Library District contributions, (ii) reliance on a contribution of \$1,375,000 in Library District funds when only \$500,000 has been pledged towards the

project, (iii) restrictions on capital uses of Library District funds, and (iv) cessation of city support for library services.

I. \$1,500,000 contribution per Capital Contribution IGA

The Intergovernmental Agreement between Gladstone and Clackamas County allows for a \$2,500,000 contribution towards the construction of a new Gladstone Library (specified to be located at 18235 Webster Road in Section 5.1). Clackamas County provided all such funds and ~\$1,000,000 was spent on planning before the project ended due to citizen demands. Subsequently Gladstone returned the remaining \$1.5 million which is being held in reserve. Clackamas County has a reasonable claim that the nature of the agreement has changed given the changed elements (new, smaller location) of the proposed project given the language in Section 5.1. However, Gladstone also has a reasonable claim that the County must provide the remaining \$1.5 million to support construction of a library under the narrow language of the distribution paragraph. It would require an amendment of the intergovernmental agreement with Gladstone to clarify the expectations of the parties.

Therefore it is in the Board's discretion on whether to provide the \$1.5 million in funding for the project.

II. Request for \$875,000 in additional contributions from Oak Lodge Library Fund

Gladstone's financial projections include receiving an estimated \$1,375,000 from accrued but unexpended Library District funds distributed to the Oak Lodge library. Of those funds, \$500,000 has been committed to support work towards completing the new library. Per Section III below, those funds should be used on non-capitol items such as purchase of furniture, expanding the library's collection to fit the available space, upgrade of computers, etc. Gladstone has no legal claim on the remaining \$875,000 requested, although I understand it has been reserved by county library management.

Therefore it is in the Board's discretion on whether to provide the requested additional \$875,000 in funding for the project.

III. Use of Library District Funds for Capital Purposes

In forming the Library District, the County faced a boundary issue because a county service district providing library services already existed, covering the area of the Estacada school district. The Estacada District issued bonds to support construction of library improvements for the City of Estacada's Library. Applicable state statute requires that two districts not exist over the same territory providing the same service. To avoid the necessity of removing the Estacada area from the county-wide Library District, during the formation process the Board determined that the Estacada District was used

for capital-only purposes and the Library District of Clackamas County would be used for operating-only purposes.

This was reflected in the election materials provided to voters. The explanatory statement noted that “The Library District would implement a permanent rate of \$0.3974 per \$1,000 assessed value to exclusively fund library services....This dedicated funding would allow the libraries in Clackamas County to stay open and continue their programs.” The formation board order adopted November 18, 2008, established similar reasons for formation of the District, which state:

1. To provide a dedicated, stable funding source for the support of library services.
2. To raise revenue to be distributed to the existing city and county-operated libraries in the system. Formation of the District should provide sufficient funding to raise the service levels at all facilities to the most basic (“Threshold”) level recommended by the Oregon Library Association.

The reasons excluded capital expenditures consistent with formation proceedings and the election materials. The funding is intended to expand the level of library services available to residents to meet those standards.

Further, the Intergovernmental Agreement (“District IGA”) between the Library District and the cities that provide library services (“Library Cities”), including Gladstone, places restrictions on the use of funds in Section 2.1 be only to “...provide public library service, and shall expend the entire library revenue paid under this Agreement in accordance with the purpose for which it was provided by implementing a plan to achieve the Service Standards.” The service standards are generally defined around the provision of Threshold standards which are attached to the District IGA.

Overall there is clear intent by the District formation process, the Library Cities and the voters that the monies generated by the Library District be used to raise the level of library services provided operationally, not via capital expenditures. The County followed that approach in constructing Sunnyside Library.¹

However, the Library District is a pass-through financing entity that does not make direct expenditures. It is not a direct violation by the Library District for Gladstone to expend funds inconsistent with the District’s charter. Rather, it is a breach of the District IGA’s restrictions on the use of funds. The District IGA addresses the enforcement mechanism for such a breach in Section 4.14, which states in relevant part:

¹ I note that Oregon City appears to be violating both the letter and spirit of the District IGA through their current library reconstruction funding plans. Oregon City staff did not consult with County staff regarding their plans.

The Parties hereto recognize that the District is relying on the good faith and commitments of the Library Cities to utilize the funding provided by the District in the promised manner. The Parties expect that to the extent there is any noncompliance or breach of this Agreement, the Parties will discuss such noncompliance or breach in the District Advisory Committee and encourage an effort towards compliance. If discussions and encouragement do not remedy the continued failure of a party to meet the Service Standards or other term of this Agreement, then the District Advisory Committee shall meet to consider an amendment to this Agreement to create incentives for compliance, including but not limited to withholding of District funds, reallocation of unincorporated residents to neighboring service areas, or other such actions as may be deemed appropriate. The Parties hereto agree that in an event of a material breach of this Agreement by one of the Parties, an amendment proposed to specifically address such breach shall require a two-thirds vote of the Library Cities, including but not limited to any amendment which would reduce the breaching City's 100% return on assessments within such City's boundaries, either via a Formula amendment or otherwise.

Any effort to address non-compliance, by either Gladstone or Oregon City, must go through a peer effort and have the consent of two-thirds of the Library Cities. There is little question, however, that at the time of formation and agreement the various Library Cities were not to expend Library District funds on capital purposes. This was by design at the formation of the District, as the Library Cities were not willing to sign on to an agreement that allowed for a degree of County control over city libraries and the then-Board had expressed a desire to exit the retail library service management area.

For legal compliance reasons, I do not recommend the Board endorse by vote Gladstone's approach. However, the Board cannot stop Gladstone from putting whatever item it wishes on the November ballot and the only enforcement mechanism available requires the consent of the other cities to have any impact.

IV. Cessation of City Support for Library Services

A related issue is that the current financing plan for Gladstone has a complete cessation of city support for library services from their general fund. As noted above, the Library District is intended to be additive, not replacing, of city support for library services in their city and for unincorporated residents. Specifically, Section 2.1 of the District IGA states that "District funds may not be used to support general overhead or administrative costs of Cities except to the extent such overhead or administrative costs are directly related to the provision of library services and/or the operation of a public library." This was intended to prevent overloading of charges on District funds. Since money is fungible, the wholesale withdrawal of general fund support for library services can be seen as using Library District funds for the support of overhead and/or administrative costs that were previously born by the City.

The structure of the Library District is such that the County is not the enforcer of the terms of the District IGA. Rather, it is structured that each Library City will be incentivized to challenge each other to "pull their weight" in the provision of an integrated library service system for the residents of Clackamas County. The same enforcement provision discussed above would apply to this situation as well.

Conclusion.

Each of the four legal issues identified above represent open issues that are more policy questions than pure legal issues. The Board has the flexibility to:

- continue on the current path and provide the agreed \$1.5 million in funds but no others;
- provide the agreed \$1.5 million in funds and the requested additional \$875,000;
- Agree to provide all requested funds but not allocate the additional Library District funds relating to the unincorporated area but continue to direct them to the Oak Lodge Library; or
- Refuse to provide the funds and look for alternative solutions.

I would like to address one final issue that is not purely legal but is raised by the above discussion. The combination of reliance on County and Library District funds for the capital construction and cessation of city contributions to the operations of the library means that there is no compelling reason for the proposed project to be controlled by the City of Gladstone. It becomes a solution funded exclusively through county and Library District resources and could be implemented without Gladstone participation at all in any location. This challenges the philosophy behind the Library Cities model where each city is intended to be an active partner in supporting a high level of library services to all residents throughout the County. This issue may have an impact on weighing the policy questions and choices outlined above.

CS

cc: Stephen Madkour
Gary Barth
Doris Grolbert