

From: Our Money Our Transit [mailto:ourmoneyourtransit@gmail.com]

Sent: Thursday, April 07, 2011 4:29 PM

To: BOYATT Tom; BARRY Celia; ARCHER Mary (SMTP); Central Lane Metropolitan Planning Organization; RINER Andrea G; WIEDERHOLD Kathi M; THOMPSON Paul E; PAYNE Susan G (LCOG); CRAWFORD Savannah (ODOT); CHICKERING Sonny P (SMTP); Springfield Mayor; Springfield CMOMail; FORE Karmen (OR); Rep. Jefferson Smith; Rep. Kate Brewer; NATHANSON NANCY (LCOG List); HOLVEY PAUL (LCOG List); BARNHART Phil (OR); MORGAN Susan (OR); BEYER Terry (OR); Rep. Val Hoyle; Sen. Betsy Johnson; MORRISETTE Bill (OR); EDWARDS CHRIS (LCOG List); Sen. Diane Rosenbaum; Sen. Doug Whitsett; PROZANSKI Floyd (OR); MORSE Frank (OR); Sen. Lee Beyer; Verger; BOZIEVICH Jay K; HANDY Rob M; LEIKEN Sid W; SORENSON Pete; STEWART Faye H; Springfield Mayor; Springfield CMOMail; Springfield DSDMail

Subject: 16 Plaintiffs opposing the West Eugene EmX file suit against the City of Eugene

From: Our Money Our Transit [mailto:ourmoneyourtransit@gmail.com]

Sent: Thursday, April 07, 2011 2:18 PM

To: 'Daily Emerald News'; 'Daily Emerald Opinion'; Editor Eugene Weekly; Eugene Weekly_Camilla; KEZI News Desk; KEZI_Gia Vang; KEZI_Jeff Skrzypek; KLCC News; KMTR News Desk; KMTR_Alex; KMTR_Chris McKee; KPNW 1120_Bill; 'KVAL'; KVAL_Walker; Lars Larson; LCC_Rachael; Register Guard_Chris Frisella; Register Guard-_Matt Cooper; Springfield Times

Subject: 16 Plaintiffs opposing the West Eugene EmX file suit against the City of Eugene

16 Plaintiffs opposing the West Eugene EmX file lawsuit against the City of Eugene

The overarching purpose of the lawsuit is because there is need for all the citizens of Eugene to be heard. The Eugene City Charter amendment was written and passed to address this exact situation. We are asking for a Judge to clarify what has been a very controversial issue.

The fact that so many citizens were willing to join as plaintiffs in this action is indicative of the broad level of opposition to this project in the community.

The City should submit the proposed route to a public vote so that federal, state, and local decision makers truly know whether there is support for the project before moving forward.

We believe the Metropolitan Policy Committee should not take any action to approve a route until this litigation is resolved. Taking action to approve a particular route while this litigation is pending creates a substantial risk that public tax dollars will be wasted on further studies for a route that may not ultimately be supported by the public.

For more information, contact Bob Macherione, 541-342-1520

Don't forget to sign the petition- and pass on the link to friends and family.

<http://www.petitiononline.com/EmX2010/petition.html>

Stop the Green Dragon

www.OurMoneyOurTransit.com

OurMoneyOurTransit@gmail.com

Facebook "Stop the Green Dragon"

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IN THE CIRCUIT COURT OF OREGON
FOR THE COUNTY OF LANE

**ROBERT MACHERIONE, JOHN
WOODRICH, GEORGE COLE, BOYD
IVERSON, DAVE SWENSON, IRVING
WEINER, SCOTT BOCCI, ROY
BENSON, JAMES KLINE, JOHN
TOKATLY, MARJORIE SCOTT, ROD
JOHNSON, STUART BARR, KONO
WONG, JOHN KIEFER, JOHN
HAMMER**

Plaintiffs,

v.

CITY OF EUGENE

Defendant.

COMPLAINT

(ORS 28.010 et seq)

1.

Plaintiffs Robert Macherione, John Woodrich, George Cole, Boyd Iverson, Dave Swenson, Irving Weiner, Scott Bocci, Roy Benson, James Kline, John Tokatly, Marjorie Scott, Rod Johnson, Stuart Barr, Kono Wong, John Kiefer, and John Hammer bring this action pursuant to ORS 28.010 *et seq* for declaration of rights, status, and other legal relations upon matters in actual controversy between the parties herein.

2.

Robert Macherione is a resident of the City of Eugene, an elector, a taxpayer, and owner of

1 a business located within the corporate boundaries of the City of Eugene.

2 3.

3 John Woodrich is a resident of the City of Eugene, an elector, a taxpayer, and owner of a
4 business within the corporate boundaries of the City of Eugene.

5 4.

6 George Cole is a resident of the City of Eugene, an elector, a taxpayer and owner of a
7 business within the corporate boundaries of the City of Eugene.

8 5.

9 Boyd Iverson resides outside the corporate boundaries of the City of Eugene, but owns a
10 business as well as property located within the corporate boundaries of the City of Eugene and is
11 a taxpayer.

12 6.

13 Dave Swenson is a resident of the City of Eugene, an elector, a taxpayer, and owner of a
14 business within the corporate boundaries of the City of Eugene.

15 7.

16 Irving Weiner resides outside the corporate boundaries of the City of Eugene, but owns a
17 business located within the City of Eugene and is a taxpayer.

18 8.

19 Scott Bocci is a resident of the City of Eugene, an elector, a taxpayer, and owner of
20 property within the corporate boundaries of the City of Eugene.

21 9.

22 Roy Benson resides outside the corporate boundaries of the City of Eugene, but owns a
23 business located within the corporate boundaries of the City of Eugene and is a taxpayer.

24 10.

25 James Kline resides outside the corporate boundaries of the City of Eugene, but owns a
26 business within the City of Eugene and is a taxpayer.

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11.

John Tokatly is a resident of the City of Eugene, an elector, a taxpayer, and an owner of a business within the corporate boundaries of the City of Eugene.

12.

Marjorie Scott is a resident of the City of Eugene, an elector, a taxpayer, and an owner of a business within the corporate boundaries of the City of Eugene.

13.

Rod Johnson is a resident of the City of Eugene, an elector, a taxpayer, and an owner of a business within the corporate boundaries of the City of Eugene.

14.

Stuart Barr resides outside the corporate boundaries of the City of Eugene but owns a business within the corporate boundaries of the City of Eugene and is a taxpayer.

15.

Kono Wong is a resident of the City of Eugene, an elector, a taxpayer, and an owner of a business within the corporate boundaries of the City of Eugene.

16.

John Kiefer is a resident of the City of Eugene, an elector, a taxpayer and owner of properties and a business within the corporate boundaries of the City of Eugene.

17.

John Hammer is a resident of the City of Eugene, an elector, a taxpayer and owner of properties within the corporate boundaries of the City of Eugene.

18.

Defendant City of Eugene is a municipal corporation duly chartered and organized under the home rule provisions of the Oregon Constitution and laws of the State of Oregon.

19.

The Lane Transit District is a mass transit district duly established in 1970. Lane Transit District currently operates a Bus Rapid Transit system. The system is known as the Emerald

1 Express and commonly referred to as EmX.

2 20.

3 At the direction of the City of Eugene, the Lane Transit District is currently making plans
4 to expand EmX into West Eugene. The planning processes Lane Transit District is currently
5 undertaking include the selection of a locally preferred build route and efforts to secure state,
6 federal, and other funding for the construction of the locally preferred route for expanding EmX
7 into West Eugene.

8 21.

9 On or about March 9, 2011, the City Council for the City of Eugene voted to select a
10 specific route, known as the 6th, 7th, 11th route, as the preferred route for West Eugene EmX
11 expansion.

12 22.

13 On or about March 16, 2011, the Lane Transit District Board of Directors voted to select a
14 specific route, known as the 6th, 7th, 11th route, as the preferred route for West Eugene EmX
15 expansion.

16 23.

17 On or about April 14, 2011, the Metropolitan Policy Committee is scheduled to vote on
18 whether it will select a specific route, known as the 6th, 7th, 11th route, as the preferred route for
19 West Eugene EmX expansion.

20 24.

21 Section 41 of the Eugene City Charter provides as follows:

- 22 (1) No freeway or throughway, as defined by ORS 374.010 or 377.710(12), may be
23 constructed by the city, nor may the city enter into any agreement approving or
24 facilitating construction of such a freeway or throughway, unless the route of the
25 freeway or throughway is first approved by a majority of the voting electors of the
26 city in a city election conducted in accordance with law and unless the agreement is
entered into within a time specified by the measure submitted to the voters for their
approval.
- (2) The city may, however, without such prior approval, prepare preliminary plans and
specifications and statements of impact, including plans, specifications, and

1 statements of impact necessary for obtaining financial assistance for the freeway or
2 throughway, all of which shall be available to the public at the city hall prior to the
election on the route of the freeway or throughway.

- 3 (3) Prior to the election, a map and a description of the proposed route and of
4 intersections of other thoroughfares therewith and a notice of the election, shall be
5 published once a week for four consecutive weeks in the newspaper with the largest
general circulation published in the city.

6 25.

7 Significant portions of the 6th, 7th, 11th route selected by the City of Eugene as the preferred
8 route for West Eugene EmX expansion, which Lane Transit District is currently making plans for,
9 will contain exclusive bus lanes, will limit access to abutting land and constitute a throughway
10 within the meaning of ORS 374.010. Plaintiffs Macherione, Woodrich, Cole, Iverson, Weiner,
11 Bocci, Benson, Kline, Tokatly, Scott, Johnson, Wong, Kiefer and Hammer own or occupy land
12 abutting the 6th, 7th, 11th route selected by the City of Eugene as the preferred route for West
13 Eugene EmX expansion and will have only a limited easement of access.

14 26.

15 The 6th, 7th, 11th route selected by the City of Eugene as the preferred route for West
16 Eugene EmX expansion, which the Lane Transit District is currently making plans for, cannot be
17 constructed by Lane Transit District without the City of Eugene entering into an agreement
18 approving or facilitating construction.

19 27.

20 The City of Eugene holds the position that construction of the 6th, 7th, 11th route selected
21 by the City of Eugene as the preferred route for West Eugene EmX expansion may occur without
22 the route being submitted to a public vote in accordance with Section 41 of the Eugene City
23 Charter.

24 28.

25 The City of Eugene previously failed to comply with Section 41 of the City Charter in
26 authorizing the construction of its pilot bus rapid transit corridor known as the EmX Green Line or

1 the Franklin EmX without submitting the route to a public vote. The City of Eugene's past failure to
2 comply with Section 41 of the City Charter is consistent with its current position that no public vote
3 is required for the West Eugene EmX expansion.

4 29.

5 Public resources are presently being spent on environmental assessments, grant
6 applications, and other planning processes, which are not preliminary in nature, based on the City
7 of Eugene's position that the City of Eugene is not required by Section 41 of the City Charter to
8 submit the route associated with West Eugene EmX expansion to a public vote. The expenditure
9 of these public resources, based on the City of Eugene's position that Section 41 of the City
10 Charter does not require a public vote on the route associated with West Eugene EmX expansion
11 is adversely impacting Plaintiffs' interests as taxpayers, electors, and property or business
12 owners.

13 29.

14 Public entities, including the City of Eugene, Lane Transit District, Metropolitan Policy
15 Committee, and other public entities are making decisions based on the City of Eugene's position
16 that the City of Eugene is not required by Section 41 of the City Charter to submit the route
17 associated with West Eugene EmX expansion to a public vote.

18 30.

19 Plaintiffs are committed to ensuring a public vote on the route associated with West Eugene
20 EmX expansion and cannot reasonably determine whether or how to exercise their initiative rights
21 protected by the Oregon Constitution in the absence of a legal determination concerning their
22 rights, status, and legal relations arising under Section 41 of the Eugene City Charter.

23 31.

24 The City of Eugene's position that Section 41 of the City Charter does not require a public
25 vote on the route associated with West Eugene EmX expansion is disenfranchising the electoral
26 rights of those Plaintiffs who are residents of the City of Eugene and entitled to vote on the route

1 associated with West Eugene EmX expansion under Section 41 of the Eugene City Charter.

2 32.

3 All Plaintiffs in this action are opposed to the 6th, 7th, 11th route the City of Eugene has
4 selected as the locally preferred alternative for West Eugene EmX expansion. All Plaintiffs have
5 businesses or properties that will be adversely impacted by the 6th, 7th, 11th route. All Plaintiffs
6 have advocated against the 6th, 7th, 11th route. All Plaintiffs seek the opportunity to advocate
7 against the 6th, 7th, 11th route for West Eugene EmX expansion in the context of a public election
8 because, *inter alia*, the West Eugene EmX expansion will harm their business or property
9 interests and adversely impact the community wherein they conduct business, own property,
10 reside, or work. All Plaintiffs in this action are adversely impacted by the City of Eugene's
11 position that Section 41 of the City Charter does not require a public vote on the route associated
12 with West Eugene EmX expansion.

13 33.

14 In the absence of a declaration from this court determining the rights, status, and other legal
15 relations of the City of Eugene, Plaintiffs, and other same or similarly situated persons under
16 Section 41 of the Eugene City Charter, public resources will continue to be spent and public
17 decisions will continue to be made based on the City of Eugene's erroneous position that a public
18 vote on the route associated with West Eugene EmX expansion is not required.

19 **FIRST CLAIM FOR RELIEF**

20 34.

21 Plaintiffs re-allege paragraphs 1-33 herein.

22 35.

23 Pursuant to ORS 28.010 et seq, Plaintiffs are entitled to a declaration that the 6th, 7th, 11th
24 route selected by the Eugene City Council as the locally preferred route for West Eugene EmX
25 expansion is a throughway and that Section 41 of the Eugene City Charter requires the route to be
26 approved by voters before the City enters into any agreement authorizing or facilitating

1 construction of the proposed route. Plaintiffs are also entitled to other equitable relief pursuant to
2 ORS 28.080 as well as their costs and disbursements and reasonable attorney fees herein as they
3 are seeking to vindicate an important public interest as much as their own.

4 **SECOND CLAIM FOR RELIEF**

5 36.

6 Plaintiffs re-allege paragraphs 1-33 and 35 herein.

7 37.

8 Pursuant to ORS 28.010 et seq, Plaintiffs are entitled to a declaration that the Eugene City
9 Council's vote on March 9, 2011 to select the 6th, 7th, 11th route as the preferred route for West
10 Eugene EmX expansion constituted an agreement to facilitate construction of throughway, which
11 was not preliminary in nature, and the vote was taken in violation of Section 41 of the Eugene
12 City Charter. Plaintiffs are also entitled to other equitable relief pursuant to ORS 28.080 and their
13 costs and disbursements and reasonable attorney fees herein as they are seeking to vindicate an
14 important public interest as much as their own.

15 WHEREFORE Plaintiffs pray for judgment against Defendant as follows:

- 16 1. Upon Plaintiffs' First Claim for Relief, judgment declaring that the 6th, 7th, 11th
17 route selected by the Eugene City Council as the locally preferred alternative for
18 West Eugene EmX expansion is a throughway and must be approved by voters
19 pursuant to Section 41 of the Eugene City Charter before the City of Eugene
20 enters into any agreement authorizing or facilitating construction of the proposed
21 route, and further; additional equitable relief pursuant to ORS 28.080 consisting
22 of judgment requiring the City of Eugene to inform all local, state, and federal
23 entities with decision or grant making authority of the City of Eugene's
24 requirement that the route be approved by voters, along with their costs,
25 disbursements, and reasonable attorney fees herein.

26

1 construction of the proposed route. Plaintiffs are also entitled to other equitable relief pursuant to
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21 route, and further; additional equitable relief pursuant to ORS 28.080 consisting
22 of judgment requiring the City of Eugene to inform all local, state, and federal
23 entities with decision or grant making authority of the City of Eugene's
24 requirement that the route be approved by voters, along with their costs,
25 disbursements, and reasonable attorney fees herein.

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