

bobagain
4232 Colfax Ave So.
Minneapolis, MN 55409
bobagaincarneyjr@gmail.com – 612-812-4867
September 24, 2015

An open letter to each Minneapolis City Council member, and to Mayor Hodges

Re: Southwest Light Rail; Municipal Consent

Dear Council Member:

As you know, the second City Council vote on Municipal Consent for the current proposed Southwest Light Rail route is scheduled for tomorrow. Earlier, I sent all of you a letter asking you to state whether you think it is safe to have two half mile tunnels, each with a Light Rail train inside, and a mile long chemical tanker train with Bakken crude, or ethanol, or other dangerous chemicals above the tunnels. If you have not yet signed one or the other statements (IS safe, or is NOT safe) and returned it to me, I ask you again to do so.

However, the purpose of this letter (I'm sorry it's so long) is to give you some background on the Lakes and Parks Alliance legal challenge – and to suggest what I hope might be a way out of this mess.

Please note: I am not a member of Lakes and Parks Alliance, I do not speak for them, and I am not an attorney. The information and assessment I am providing is on a strictly “As Is” basis – but this is something I've studied a lot, and of course everyone is entitled to their own opinion (but not their own facts).

Judge Tunheim's order denying the LPA Summary Judgment motion – the legal issue

Below is an excerpt from the end of Federal District Judge John Tunheim's order, filed 8/4/15.

This action involves complex legal issues and an evolving factual record. The theme underlying these complexities, though, and underlying the cause of action recognized in this Court's prior Order, in Limehouse, and in environmental regulations like Section 1506.1, is that full and thorough environmental review of a major government project is vitally important. The LPA may not have met its summary judgment burden at this point, but the record – specifically the negotiation process and agreements between the Met Council and various cities and other public entities, and public statements regarding those agreements – shows that, throughout much of this process, the Met Council has had a clear favorite route for the SWLRT. While the agency in charge can state a subjective preference, the unique nature of the municipal consent process in Minnesota for light rail projects, and the significant drumbeat of support the Met Council assembled for a single route, certainly comes close to having the practical effect of limiting the available options, such that the remaining federal environmental review is meaningless. Indeed, by signing an agreement with St. Louis Park that all but guarantees freight rail will stay in the Kenilworth Corridor, the Met Council has come dangerously close to impermissibly prejudicing

the ongoing environmental review process. Given the importance of a searching environmental analysis of each of the available options, the remaining steps in the process of securing municipal consent and finalizing environmental review – by both the Met Council and the FTA – should provide that searching analysis in order to comply with NEPA’s twin aims of informing decisionmakers and involving the public.

Here’s the bare nub of what Judge Tunheim is saying: the Met Council’s actions may have “*the practical effect of limiting the available options, such that the remaining federal environmental review is meaningless.*” If that happens, the plaintiffs, LPA, have been harmed; they should win the lawsuit.

Keep in mind that the record of the case at the time of Judge Tunheim’s August 2015 order did not fully reflect many more recent events, including the entire course of events from the most recent “budget blowup” which was first reported in late April of 2015.

A “bureaucratic steam roller” has apparently taken over

Below is a transcript I prepared, from a May 6th meeting of the Metro Council’s Committee of the Whole. The Metro Council typically meets every other week in their fancy Council Chambers, where the meeting is both live streamed and video is put on the internet later. The COTW meetings are typically not live streamed or put on the internet, but I requested and received an audio copy – that is on my youtube.com “bobagain channel” – it’s called “Metro Council Committee of the Whole 5-6-2015”. You can also access the video from my on-line 5-16-2015 News Release, titled: “We the People” Lobbyist and “Candidate/Journalist” reports on Met Council’s 5/6/16 “Bureaucratic Steam Roller Organizing Meeting:” posts new youtube video with meeting audio; says “recent Federal Court order ... bodes ill for Met Council’s plan” – that is online at www.bobagain.com.

1:14:50 CM Commers: Thank you Mr. Chair. Mark, the time frame for the identification of prospective reductions seems incredibly aggressive to me, to bring something back in two weeks to this group. Can you just talk a little bit about sort of mechanically, how does it work, to contemplate 20% or more reductions as kind of a menu that could be considered in a, you know, real time environment, like this table?

Fuhrmann: Mr. Chair, Council Member Commers, yes, it’s very aggressive. Yes, we can certainly circle back to you all for additional feedback. What I will say is that in the larger process here, we’re going to need to move this analysis through quickly, on all four fronts that I’ve outlined here tonight. And the reason for that is that – actually Mr. Chair, if I may, maybe that’s the perfect way...

Chair: It’s a good segue.

Fuhrmann: ... to conclude today’s briefing.

Chair: I was thinking the same thing.

Fuhrmann: So thank you for that entree, Council Member Commers. {background talk}. We've got about an 8 or 9 week window here, to complete these analyses, and that brings us to early July. And the reason that we've outlined this very aggressive schedule is because whatever the policy direction is, if it is anything in the "New Starts" world that we are currently residing in for the Southwest project, and have resided in since 2011, we're going to need to take that policy direction and do a lot of work very quickly to reassemble the documentation that FTA requires. That is due to FTA each year on or about September 1. That they then incorporate – FTA will look at it, maybe now even FRA's going to look at it, Office of Management and Budget's going to look at it. And that then is what is used to assemble their annual "New Starts" report, and more importantly, it goes to the President's recommended budget.

So, we have a window of opportunity here that remains to be one more year under President Obama's administration – he's got one more Federal budget in him. That will be his proposed 2017 budget. So we need to line up positions, this project, with that updated information, in FTA's hands, on about Labor Day, so that they can run that through their Federal vetting process. Our goal is to be in the President's recommended budget in 2017 for this project, to secure our full funding grant later in 2017 – actually at the end of 2016, with this president.

Chair: Council Member Barber.

CM Barber: Thank you Mr. Chair. So, one of the things you described early on as the critical path, as far as the timing for the overall project to start 2019, 2020, was the final EIS and issue the ROD (Record of Decision). If we're within that 8 to 9 week window, can that still be accomplished, or are we still behind schedule-wise?

Fuhrmann: Mr. Chair, Council Member Barber, working hard, working smart, within that 8 to 9 week window, that allows us to achieve those dates on that slide, under the right hand column. Mr. Chair, that concludes our Southwest update.

Later, at 1:26:15

CM Commers: Council Member Mundt's comments just inspired me to make a comment, that for me, you know if we had sort of a matrix of considerations, ways to reach to our 20% to 25% reduction, it does strike me, and here's my caveat: that I've not been involved in corridor planning or helping the five communities reach consensus, etc., so that's a little bit, it's off color for me to say this, but if we've got mode that's in play, and you know we've got costs around systems, and stations that are in play, I wonder if alignment on some level also needs to be in play, if we want to reach towards that 20% to 25% reduction? So I just want to make that comment, and make that suggestion, it seems like it would be a missing piece, a missing dimension of consideration if we did not revisit it.

Fuhrmann: Mr. Chair and Council Member Commers, a fair observation, but from the staff, I need to respond honestly and frankly to say that if we choose to move the alignment and if that's the policy direction, we would be back into a supplemental to the supplemental EIS, and

2020 would not be achievable, and I'm not sure if FTA would keep the project on their pipeline for a full funding grant. We would be going backwards, and delaying further, if we open up new alignments to explore here.

It seems to me these transcript portions alone are nothing less than a “smoking gun” – demonstrating that the Metro Council has effectively pre-determined the route, and effectively eliminated consideration of reasonable alternatives – specifically, any alignment out of Kenilworth. Of course, I'll be sending this letter to the Lakes and Parks Alliance organization, and encouraging their attorneys to look in to this.

Here's what all of this boils down to: You are voting on a dead plan. The Legislature will almost certainly not fund their portion. And the above transcript demonstrates, the current plan will probably not survive the Lakes and Parks Alliance legal challenge.

There may be a way out of this mess

My own view is that Southwest LRT must either be stopped or re-routed. The current route through Kenilworth is a disaster waiting to happen. It does not reach the major population centers, and destinations, that going to Uptown, and to Nicollet or I-35W would accomplish. It is horrifically dangerous due to the proposed tunnel element. It doesn't connect with the South Minneapolis and I-35W bus service. And it doesn't reach the Minneapolis Convention Center.

The FTA was dismissed as a defendant in the current LPA lawsuit, due to sovereign immunity. However, once a Record of Decision is issued, that defense is removed by statute, and they can be brought in to Federal Court – something I'm sure they would prefer to avoid for this case.

One possible solution to this mess is to encourage the Metro Council and LPA to explore a settlement of their case – but with one additional element: a written agreement from the FTA that the project can be re-scoped, examining an alignment that goes to Uptown rather than through Kenilworth – while remaining in the New Starts program. The enormous problems that have resulted from reversing the either decision to NOT allow co-location is at the root of the current and disastrous plan. The FTA – which frankly appears to have encouraged the present process – can and should be accommodating in allowing the root problem – co-location – to be corrected.

It seems to me this would be a win-win solution for everyone.

Therefore, for the above stated reasons, and because the current Kenilworth plan is unsafe and unacceptable – I urge you to deny Municipal Consent, and to return the signed statement I provided you earlier stating the current plan is not safe.

Sincerely,

Bobagain