

# Whistlestop files legal claim against SMART over San Rafael station

By Jessica Bernstein-Wax, Marin Independent Journal

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*Joe O'Hehir, CEO of Whistlestop, walks along the railroad tracks in front of Whistlestop on Friday, Jan, 27, 2012, in San Rafael, Calif. Whistlestop is concerned about the fate of its building with the SMART train coming and has filed a legal claim against the agency. (IJ photo/Robert Tong)*

Whistlestop has filed a legal claim against the Sonoma-Marín Area Rail Transit District over concerns the planned commuter train will force the San Rafael nonprofit out of its building with no cash for an alternative site.

The claim estimates damages at more than \$2 million and predicts construction and operation of the downtown San Rafael SMART station "will have disastrous impacts on Whistlestop's ability to provide its desperately needed services to the elderly and disabled." SMART officials have called the claim "baseless."

The nonprofit Whistlestop bought the 15,000-square-foot former Northwestern Pacific Railroad depot at 930 Tamalpais Ave. in 1971 and owns the building outright, allowing the organization to devote most of its \$5.5 million annual budget to transportation, programs and classes for Marin's senior citizens and people with disabilities, CEO Joe O'Hehir said.



*Joe O'Hehir, CEO of Whistlestop, displays a photo of the old Northwestern Pacific depot, now the Whistlestop taken in the 1940's on Friday, Jan, 27, 2012, in San Rafael, Calif. Whistlestop is concerned about the fate of its building with the SMART train coming and has filed a legal claim against the agency. (IJ photo/Robert Tong)*

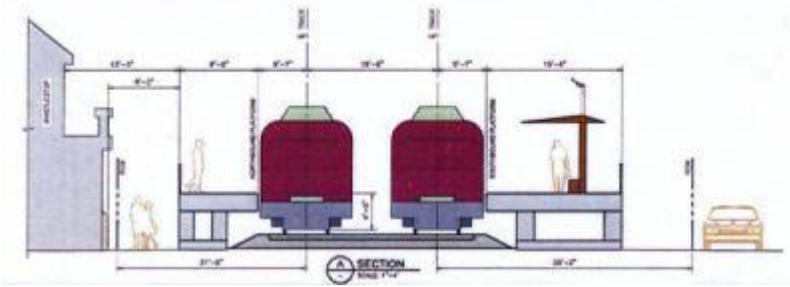
"The challenge I'm having is our working capital," O'Hehir said. "It's tied up in this building. ... What really we need to know is the status of the building. Is SMART going to buy it? If not, what are we going to do?"

Whistlestop has more than 40 dedicated parking spaces, 23 of which are in the SMART right-of-way, O'Hehir said. He noted that the nonprofit has been using the spaces based on a previous agreement with the Golden Gate Bridge, Highway and Transportation District and the city of San Rafael.

However, SMART will reclaim its spaces and possibly seize additional ones as the project moves forward. That would leave Whistlestop in violation of city parking requirements and without adequate spaces for its clients, many of whom have mobility issues, he said.

In addition, Whistlestop's only Americans with Disabilities Act entrance abuts the future station and may become inaccessible to shuttles carrying clients, according to the legal claim.

The organization also remains concerned about noise from construction and trains, as well as vibrations and increased foot traffic on its property.



*Artist rendering of the San Rafael depot which SMART is proposing for the current Whistlestop headquarters.*

Even if Whistlestop finds a suitable new site in central San Rafael, it will likely have trouble selling its building estimated to be worth \$3.6 million, O'Hehir said.

"For us to sell the building if SMART does not buy it, any buyer wants to know what the status of the building is," he said. "Anybody purchasing the building is going to face the same situation (as we are)."

Farhad Mansourian, SMART's general manager, said the district is "extremely disappointed that (Whistlestop) chose to take a legal route."

He said he could not comment on the legal claim, filed in late November, until SMART attorneys complete their reply, but noted that he met with O'Hehir shortly before the claim was filed.



*A photo of the old Northwestern Pacific depot, now the Whistlestop taken in the 1940's.*

"I personally met with the executive director and their lawyer and staff and gave them all the information, and our lawyers gave them the legal analysis," Mansourian said. "They got everything they asked for. ... That they choose to take a claim route — it's very strange for a nonprofit organization to be wasting their money on legal fees."

O'Hehir said he still wants to work with SMART and only filed the claim to push the matter forward, because work on the station may start as early as the spring of 2013 and Whistlestop needs to know where it stands.

San Rafael Mayor Gary Phillips, who serves on the SMART board, said he has been meeting with Whistlestop and others to discuss possible solutions.

"The train's going to come right to the facility there and there's not much room with an off-ramp and the staging area — there's just not enough room," Phillips said. "The parking's insufficient."

"I'm anxious to work with them to make sure they stay in San Rafael," he added. "From the city's standpoint we're more than willing to help with anything we might be able to."