

# Oregon Government Ethics Commission

## COMPLAINT FORM

Case No. \_\_\_\_\_  
(assigned by commission)

See page two of form for important information

(please type or print clearly)

1. Identify the public official(s) you believe may be involved in the alleged violation: *(If you are alleging that more than one person may have violated the law, you must provide complete information for each individual. You may attach additional sheets if necessary.)*

Name: James (Jim) Bernard

Address: 2051 Kaen Rd.

Oregon City, OR 97045

Public Position: Clackamas County Commissioner

Telephone: (work) 503-655-8581  
(include area code)

(home) not publicly available

(email) not publicly available

2. Describe in detail the circumstances, incidents or events that lead you to believe a violation has occurred. Provide information that would answer such questions as who, what, how, where and when. Enclose any supporting documents, minutes, recordings, statements, news clippings, etc. The information you provide must support your belief that a violation occurred and the named official was responsible. *(You may attach additional sheets if necessary)*

I hereby complain to the Commission and request a formal investigation about the following:

Violation of ORS 244.120

See attached sheet and exhibits attached.

I understand that upon receipt of this complaint, the public official subject to this complaint will be notified of the nature of the complaint, my identity and will be provided copies of this complaint and any enclosures.

Signature: MacArthur Woods

Date: 3/28/2012

Printed Name: MacArthur Woods

Mailing Address: 11677 S MACSKRUB RD  
CANBY, OR 97013

Telephone: (work) 503-263-3344 (home)   
(include area code) (email) AMERICA@CANBY.COM

**IMPORTANT**

The jurisdiction of the OGEC is limited to the following areas:

- Use of public office for financial gain (ORS Chapter 244)
- Conflict of interest (ORS Chapter 244)
- Statements of Economic Interest (Chapter 244)
- Executive session provisions of Public Meetings law (ORS 192.660)
- Lobbying regulation law (ORS Chapter 171.725 - 171.785; 171.992)

(Statutes can be viewed on our web site at [www.oregon.gov/ogec](http://www.oregon.gov/ogec))

If you have questions about this form, your complaint or the jurisdiction of the OGEC, it is suggested that you call 503-378-5105 to discuss the issue briefly with a staff investigator before you file.

Please complete all sections of the form. **Complaints will not be accepted without a signature.**

You will receive verification of receipt of your complaint and will be given any further instructions by return mail. The public official subject to this complaint will be notified of the nature of the complaint, your identity and will be provided with copies of this complaint and any enclosures.

The OGEC is required by law to conduct the preliminary review confidentially. The OGEC will make no public disclosure or comment related to this matter other than to acknowledge that a complaint is pending if an inquiry is made. The confidentiality requirement applies only to OGEC personnel. The ability of any other persons to publicly comment about this matter is not affected. At the conclusion of the preliminary review, all information concerning this matter will become available to the public.

Submit your form to: Oregon Government Ethics Commission  
3218 Pringle Rd SE, Suite 220  
Salem, OR 97302-1544

Telephone: 503-378-5105

# **Tyler Smith & Associates, P.C.**

Rural Business Attorneys

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March 28, 2012

*Via hand delivery*

RE: Jim Bernard, Conflict of Interest

Dear Mr. Woods:

Based upon Commissioner Jim Bernard's ownership of property that will be acquired by the Portland to Milwaukie Light rail project and his continual participation and voting on light rail decisions, the conclusion is inescapable that he is, and has been for some time, in violation of ORS 244.120. You may feel free to submit this analysis to the government ethics commission with your complaint if you chose to.

## **Applicable Legal Standard**

Pursuant to ORS 244.120(2), An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

**(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or**

**(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:**

**(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.**

**(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises. ORS 244.120(2)**

An actual conflict of interest is defined as:

**"Actual conflict of interest" means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (12) of this section. ORS 244.020(1).**

Commissioner Bernard would have an actual conflict of interest with regard to the Portland to Milwaukie light rail because he is making decisions, as a County Commissioner, which WILL have an effect that will lead to Mr. Bernard receiving money, through his company Bernard's Garage.



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Rural Business Attorneys

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I understand that as recently as March 27, 2012 newspaper reporters and local citizens have been reporting on this story and demanding that Commissioner Bernard recuse himself from this topic, however he has only been willing to admit that he has a “potential conflict of interest”. However Mr. Bernard is mistaken.

### **How Commissioner Bernard’s Financial Interests will be effected**

Mr. Bernard has stated publicly multiple times that he is the owner of Bernard’s Garage Inc.. Bernard’s Garage Inc., is listed on Clackamas County tax assessor records as the property owner for at least seven different tax lots on Block 37. Those lots include parcel #s:

**11E36BC01000 Lot 5 (Exhibit 1)**

**11E36BC01100 Lot 6 (Exhibit 2)**

**11E36BC01200 Lot 6 (Exhibit 3)**

**11E36BC01500 Lot 2 (both the alleyway lot and the structure lot) (Exhibit 4)**

**11E36BC01600 Lot 3 (Exhibit 5)**

**11E36BC01600 Lot 4 (Exhibit 5)**

The clear and unequivocal reason that there has been a violation of ethics rules now and maybe as far back as 2008, for then Mayor Jim Bernard to not recuse himself from the decision making is that TriMet will be paying money to Bernard’s Garage as part of the property acquisition. When money will change hands, that “effects the private pecuniary benefit” of the elected official.

TriMet’s records confirm that at least part of the property owned by Bernards Garage Inc. will be acquired for the light rail project. (Exhibit 6). TriMet’s list of properties to be acquired shows that as of now, at least part of two of the properties will be acquired. The list shows that tax lots 1500 and 1600 are set for acquisition. It is not currently clear whether the property will be taken through eminent domain or voluntary sale to TriMet, but that does not make a difference. Acquisition requires payment of money, or monies worth from the government to Mr. Bernard’s company. That is as clear of an actual conflict of interest that there can be.

How long has Mr. Bernard known this, and how long has he been advocating for this location for the light rail? Public meeting records show that it was since at least 2008, when Mr. Bernard was the mayor of Milwaukie, he has been advocating for this location rather than others. (Exhibit 7). Mr. Bernard has been advised by legal counsel since at least as far back as July 14, 2008 that he should recuse himself and he has chosen to ignore that advice. (Exhibit 8).

What should his punishment, or penalty be? That will be up to the Government Ethics Commission. See ORS 244.350. Ultimately he can be fined \$5,000 under ORS 244.350(a);

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Reprimanded under ORS 244.350(5); and penalized up to twice the value that he received as a result of his violations. ORS 244.360. Depending upon just how much property it turns out he owns or has contracts too, that could be a very large number.

Of course the voters of the district also have the power to unseat an elected official, but some elected officials are in “safe” districts and may feel they are untouchable.

There are also other properties, namely 11E6BC01400 on that same block 37 which are next to Mr. Bernard’s that are subject to acquisition. (See Map exhibit 12) The owner of those properties tell local real estate agents that the property has already been sold on an unrecorded contract. There is not a good way to verify if that is true or not, however many of the Bernards Garage properties were purchased on contract. To whom have those other lots been sold? From property records, it appears that there is already shared ownership between the Buchwalter Trust, and Bernards Garage Inc., whereas they both claim ownership of Tax lot 1200 located at 5 Milwaukie Pt Lt 6, Block 37 (Bernards Garage claims ownership via recorded contract (Exhibit 11), tax records (Exhibit 3), the Buchwalter Trust claims ownership via Memorandum of Contract recorded as document 2006-100307 in the records of Clackamas County) (Exhibit 9).

Regardless of whether it is only two lots or many more than two lots that will be acquired by TriMet, Mr. Bernard has an actual conflict of interest, and has since at least 2008 because he will be paid money due to the decision he participated in to locate the light rail in this location.

In addition, Mr. Bernard will be paid money or receive other pecuniary benefits from the various subsidy and incentive programs that are being offered by TriMet. These programs include \$2500 in expense reimbursement for searching for a new business location; payment of all expenses for actually moving Bernard’s Garage; up to \$10,000 in business reestablishment expenses; or even simply a one-time cash payment of \$20,000. (see attached light rail brochure marked Exhibit 10).

### **CONCLUSION**

In summary, if the Portland to Milwaukie light rail project is constructed, Mr. Bernard will personally receive a pecuniary benefit or detriment from the project. He will in fact be paid under the current plan. This is a clear, unequivocal “actual conflict of interest”. Under ORS 244.120, Commissioner Bernard must recuse himself on that topic.

Best wishes,

*/s/Tyler Smith*