

From: Ken Reidy <kenreidy@hotmail.com>

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To: Joe Scordino <joe.scordino@yahoo.com>; John Brock <jbrock11401@gmail.com>; Dianna Maish <dmm98020@comcast.net>; Diane Buckshnis <d.buckshnis@comcast.net>; Theresa Hollis <theresahollis218@gmail.com>; CLINTON WRIGHT <clint_patwright@comcast.net>

Subject: CARA Code Amendment Timeline and Discussion including: An appeal to the Growth Management Hearings Board (GMHB) in Washington state is not considered litigation

The **Planning Board** held several meetings on the CARA Code Amendment topic:

- 1) May 24, 2023 - Introduction to the CARA code amendment
- 2) July 12, 2023 - Work session
- 3) July 26, 2023 - Public hearing #1 (held open to August 23 and then to September 13 but ultimately closed to allow time for additional work, primarily regarding stormwater)
- 4) October 25, 2023 - Work session on stormwater
- 5) November 29, 2023 - Public hearing #2

Consistent with ECDC 20.15A, a SEPA Determination of Nonsignificance was issued on November 9, 2023 - no comments or appeals were received. Notice of the draft code amendment was also provided to the Department of Commerce.

Following their public hearing on November 29, 2023, the Planning Board recommended that the City Council approve the draft language in the CARA code amendment reviewed by the Planning Board on November 29. The Board also proposed two modifications, including:

- 1) Remove mitigation section in 23.60.030(d)(1)(c); and 9.1
- 2) Disallow any UIC wells - shallow or drilled - in the QV areas of the Deer Creek aquifer but allow shallow UIC wells in the other areas of that watershed.

For reference, shallow underground injection control (UIC) wells are structures built to allow fluids to flow into the ground, typically under the force of gravity, and include dry wells and infiltration trenches containing perforated pipe among other options.

On February 28, 2024, Planning Board convened in Executive Session under the representation that Planning Board was going to discuss pending or potential litigation per RCW 42.30.110(1)(i). The Planning Board has no authority related to pending or potential litigation so this may have been an illegal Executive Session. At least two state laws were violated related to this Executive Session. First, the time the Executive Session was to conclude was not announced publicly. Second, the related Special Meeting Minutes were not published

promptly. It is also possible that multiple attendees of that Feb 28, 2024 Public Hearing disclosed confidential information afterwards – something about fear of a “taking”.

Based on guidance from the City Attorney, the Planning Board decided to reconsider their November 29, 2023 original recommendation. This reconsideration happened on March 13, 2024, a date after the February 28, 2024 Planning Board Executive Session.

Planning Board changed its Original Recommendation without conducting a new public hearing to allow the public to comment on whatever was told to Planning Board in Executive Session. I believe a strong argument can be made that this was improper procedure. The public was not provided the proper opportunity for public participation at this critical point in the process. On March 13, 2024, Planning Board made a revised recommendation to Council to eliminate proposed modification #2 and allow shallow UIC wells throughout the Deer Creek CARA.

Edmonds City Council provided for a Public Hearing on March 19, 2024. Bob Danson of OVWSD spoke as did Diane Buckshnis. Following are Diane’s Comments:

Diane Buckshnis, Edmonds, said Mr. Scardino left because he did not think the council was listening. She agreed with Mr. Danson’s comments, noting she wrote about it in the newspaper. She recommended the council approve the planning board’s original recommendation and not allow more digging. She pointed out the information staff provided was not visible to the audience. She referred to an email she received that said if the council sees science that convinces them more protection is needed, they will make the code more stringent. In her opinion, the council needed to protect the city’s residents via a more stringent code and change the code later if science supported it. She urged the council to approve the code as recommended in December. With no further public comment, Mayor Rosen closed the public hearing.

Edmonds City Council did not vote on the CARA code on March 19, 2024. Council voted to adopt a new CARA Code on a future consent agenda via a 6-1 vote on April 16, 2024. It was on the Consent Agenda for Council’s April 23, 2024 meeting but was removed from the consent agenda and tabled.

It was removed from the table on May 7, 2024 and passed via a 6-1 vote.

On July 8, 2024, EEC filed its Petition for Review.

I now am of the belief that this review is an Administrative Hearing and not Litigation. Google’s AI states the following:

An appeal to the Growth Management Hearings Board (GMHB) in Washington state is not considered litigation:

- **Petition for review**

The petition should frame issues as questions, written in a yes or no format, and be concise and to the point. The legal issues are allegations, not arguments, and the petition is not the place to argue the merits of the case.

- **Prehearing briefs**

The petitioner and respondent will have the opportunity to argue their cases in their prehearing briefs.

If the Petition for Review is not litigation, Council cannot discuss it in Executive Session under the guise of pending or potential litigation.

If any of the following Executive Sessions discussed EEC's Petition, the related Executive Sessions violated the OPMA. If EEC's Petition was discussed in Executive Session, EEC has every right to know exactly what was discussed in Executive Session. EEC should have known such in real time.