

EVERGREEN ISLANDS

May 1, 2012



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To: Jason Easton (Chair)

cc: Mary J. McGoffin (Vice Chair), Josh Axthelm, Carol Ehlers, Dave Hughes,
Annie Lohman, Matt Mahaffie, Elinor M. Nakis:

cc: Skagit County Planning & Development Services

**Re: 2011 Comprehensive Plan Amendments
Lake Erie Trucking Amendment proposal (PL11-0250)
Request for Ms. Ehlers Disqualification**

Dear Mr. Easton:

On reviewing the comments for the 2011 Comprehensive Plan amendments, I was surprised at the level of personal involvement Commissioner Carol Ehlers in the Lake Erie Trucking Amendment proposal (PL11-0250). In her November 22, 2011 letter¹ to the Skagit County Commissioner, Ms. Ehlers clearly acted as a proponent for Lake Erie Trucking. A copy of Ms. Ehlers is included as Attachment 1.

Based on a concern for fairness, I reviewed the Municipal Research and Services Center (MRSC) report, "The Appearance of Fairness in Washington State."² On review, the rezone of Lake Erie Trucking's single parcel is a quasi-judicial action, and Ms. Ehlers' participation and submissions violate the Appearance of Fairness Doctrine.

Consequently, Evergreen Islands requests that the Skagit County Planning Commission disqualify Ms. Ehlers from participating in the Lake Erie Trucking rezone proposal. Evergreen Islands' comments justifying our request are presented on the following pages.

Respectfully yours,

A handwritten signature in black ink that reads "Tom Glade". The signature is written in a cursive, flowing style.

Tom Glade

President, Evergreen Islands

¹ Carol Ehlers Letter to the Skagit County Commissioners, "Request for docketing and approval of Rezone PL11-0250 (hereafter P19168)," November 22, 2011.

² "The Appearance of Fairness in Washington State," Municipal Research and Services Center Report Number 32, revised April 2011.

Is the Comprehensive Plan Amend Process Legislative or Quasi-Judicial?

RCW 42.36.010, Local land use decisions defines which actions are quasi-judicial, and it states the following (emphasis added):

Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. **Quasi-judicial actions do not include** the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or **the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.**

In the Commonly Asked Questions section of the MRSC Fairness Report³, the following questions are posed:

Is a council hearing on the adoption of an area-wide zoning ordinance subject to the appearance of fairness doctrine?

No. Even though it requires a public hearing and affects individual landowners, this type of proceeding is legislative rather than adjudicatory or quasi-judicial.

Is a rezone hearing subject to the doctrine?

Yes. The decision to change the zoning of particular parcels of property is adjudicatory and the appearance of fairness doctrine applies. (See *Leonard v. City of Bothell*, 87 Wn. 2d 847, 557 P.2d 1306 (1976).

Since the Lake Erie Trucking amendment proposal, PL11-0250, is a zoning change for a particular parcel, P19168, this action is a quasi-judicial action.

Possible Violations of the Appearance of Fairness Doctrine

The questionable

Is there an appearance of fairness problem if a planning commission member owns property within an area proposed for rezone?

It would violate the appearance of fairness doctrine if a planning commission member who owns property in the area to be rezoned participates in the hearing and/or votes. In the leading case on this issue, *Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972), a planning commissioner owned property adjacent to an area to be rezoned. The court determined that the commissioner's self-interest was sufficient to invalidate the entire proceeding.

Ms. Ehlers lives across Rosario Road and a little south of Parcel P19168. P19168 is within the Del Mar Community Service water systems, as is Ms. Ehlers.

³ "The Appearance of Fairness in Washington State," p. 15, 16.

Personal Interest

The MRSC Fairness report⁴ states the following regarding bias due to a personal interest:

From the earliest Washington cases, our courts have demanded that decision-makers who determine rights between specific parties must act and make decisions in a manner that is free of the suspicion of unfairness. The courts have been concerned with “entangling influences” and “personal interest” which demonstrate bias, and have invalidated local land use decisions because either the hearings appeared unfair or public officials with apparently improper motives failed to disqualify themselves from the decision-making process.

The report then states that personal interest exists when someone stands to gain or lose because of a governmental decision. The courts have found personal interest to exist in the following situations: Financial Gain, Property Ownership, Employment by Interested Person, Prospective Employment by Interested Person, Associational or Membership Ties, Family or Social Relationships.

In her letter Ms. Ehlers states the following (emphasis added):

The Comp Plan gives short shrift to housing, noting only that houses require service and that to buy one is the single largest purchase made by most household. There is nothing in the Plan to protect the value of existing homes, however. In practice, while there is mention elsewhere in the Plan of property rights, these have been ignored in several ways. **That the parcel is within a homeowners association with WA DOH regulations to honor and the need for money to do it**, is ignored.

Ms. Ehlers appended a Del Mar Community Service letter to William Wooding to her letter, which states:

The parcel has one water share. If more than one residential water connection is required, additional water shares must be purchased along with payment of all past capital dues and assessments for each connection. There are 13 water shares available purchase.

Note that the Staff Recommendations⁵ states that if P19168 is rezoned to Rural Reserve, a standard plat would allow 3 dwelling units and a CaRD plat would allow 7 dwelling units. When developed, Lake Erie Trucking would have to purchase 3 to 7 water shares from the Del Mar Community Service – that purchase would reduce financial liability because the system cost would be shared by more shareholders.

If future water system costs increase, the financial impacts on the shareholders (one of the shareholders being Ms. Ehlers) will be shared. Increasing the number of shareholders reduces the financial contribution of each shareholder because the individual cost is the total cost divided by the number of shareholders.

⁴ MRSC Fairness Report, p.3 and 4.

⁵ Recommendations on 2011 Proposed Comprehensive Plan Amendments, March 28, 2012

Ex Parte Contacts Are Prohibited

RCW 42.36.060, Quasi-judicial proceedings – Ex parte communications prohibited, exceptions states the following (emphasis added):

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

Ms. Ehlers violated RCW 42.36.060(2) on two occasions: 1) her November 22, 2011 letter to the Skagit County Commissioners and 2) her addition⁶ to the record dated November 8, 2011.

⁶ “Re PL11-0250, Backing his request”, Carol Ehlers, received November 8, 2011.

ATTACHMENT 1

**Carol Ehlers Letter to the Skagit County Commissioners,
“Request for docketing and approval of Rezone PL11-0250
(hereafter P19168),” November 22, 2011.**



3998 Wind Crest Lane
Anacortes, WA 98221
November 22, 2011

Skagit County Commissioners et al.
1800 Continental Place
Mount Vernon, WA 98273

Re: Request for docketing and approval of Rezone PL11-0250 (hereafter P19168)

Dear BCC,

This is a brief letter to accompany 26 exhibits from many government documents, which docs demonstrate that the Rezone should be granted. It is assumed throughout that the Rural Resource designation was inappropriate, and that the land would be more suitable for the safety and prosperity of the neighborhood of residential buildout under the proposed Rural Reserve designation.

The Comp Plan assumes that zoning is a flat-earth mapping designation, -- in this case, that there is a 40 acre parcel with 160 acres in resource designation. The parcel map shows that P19168 is 35 acres with a total of 88 acres in Wooding ownership. That fails the designation. That map also shows that of the 3 largest parcels in the quarter-mile protection area, 2 have major critical area issues: P19166 to the east contains a major wetland, lake and high-hazard dam, and P68403, known as Dodson Canyon, is a steep, high sliding slope with the potential to damage Rosario Road. The other parcels to the south are part of the oldest community on Fidalgo Island and the general location of the Rosario School. All the remaining dozens of parcels are under 10 acres. The west and southwest build-out, including an insert into the original P19168 parcel, is part of Del Mar Community, a home-owners Association responsible for a developer established water system. P19168 is land within that water system with the right to water originating in Anacortes. The Subdivisions to the west, which are at risk from uncontrolled drainage, were platted before 1967, significantly pre-dating the "Resource" designation.

The Assessor has identified all the parcels in the area, except those being mined, as "Fidalgo Residential." They are taxed accordingly.

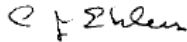
The Comp Plan gives short shrift to housing, noting only that houses require services and that to buy one is the single largest purchase made by most households. There is nothing in the Plan to protect the value of existing homes, however. In practice, while there is a mention elsewhere in the Plan of property rights, these have been ignored in several ways. That the parcel is within a homeowners association with WA DOH regulations to honor and the need for money to do it, is ignored. That, after years of demonstrating that GMA mandates attention be paid to geologically hazardous areas, a Drainage Utility was established and drainage control located on Rosario Road as far as the north edge of P19168, the County would still consider that parcel suitable for DNR management, a management that is allowed to protect Rosario Road from Dodson

Canyon, but not the private properties on both sides of it, shows a lack of attention given to topography, geology, hydrology and geomorphology that is demoralizing.

I would far rather have John Cooper apply the rules of GMA with the CAO guidelines as are mandated with Rural Reserve.

When this request comes up for SEPA Review, please give those of us with significant knowledge of the area, the risks and the possible mitigation enough time to help instead of the choice of yelling or the pressure I have been under to find the best information for you in the files I have collected since the frightening storms of November 1990 when up-hill water was still completely uncontrolled and cliffs that had been stable for decades no longer were.

Sincerely,



Carol Ehlers

Del Mar Community Service, Inc.
1004 Comercial Avenue #1111
Anacortes, WA 98221
(360) 299-2653
office@delmarcommunity.com



Date: November 19, 2011

William Wooding
13540 Rosario Road
Anacortes, WA 98221

Property Description: Parcel P19168
13835 Rosario Road
Anacortes, WA

To Whom It May Concern:

The above described property lies:

Within the boundaries of the Del Mar Community Service water service area.

One residential connection to the Del Mar Community Service water system to serve the above described property:

Will be available subject to the following stipulations marked:

None

Request for new water service connection is requested by an authorized agent of the property.

Verification that all property and account balances are current.

Member returns signed by-laws acknowledgement and the member certificate has been issued.

Application for Installation of New Water Connection is received and installation fees are paid.

Other: The parcel has one water share. If more than one residential water connection is required, additional water shares must be purchased along with payment of all past capital dues and assessments for each connection. There are currently 13 water shares available for purchase.

Is not available under the present conditions for the following reason(s):

THIS LETTER OF CONDITIONAL WATER AVAILABILITY EXPIRES ONE (1) YEAR FROM DATE OF ISSUE.

By: Tracey Huntley
Utility Manager