

**Town of Eatonville
PLANNING COMMISSION MEETING
MONDAY 7:00 PM, NOVEMBER 6, 2006
COMMUNITY CENTER
305 CENTER STREET WEST**

MSC- Motion, Second and Carried.

Chairman Beach called the meeting to order at 7:00PM .

Commissioners Present: Beach, Lind, Frink, Valentine, Schaub, Pruitt.

Town Staff Present: Mayor Smallwood (left before hearing), Nick Bond, Robert Mack, Mart Kast and Karen Bennett.

Approval of agenda: MSC

Approval of minutes: To be held over until November 20, 2006 meeting.

Communications and Announcements:

From Commissioners, Town Officials, other government bodies: There was none.

From the Public: There was none.

Public Hearings:

Beach overview of proceedings.

Board of Adjustments Hearing was opened – Aviator Heights Preliminary Plat – DN Properties.

Beach swore in the 19 individuals: Nancy Ellis, Kevin Foley, Brenden Pierce, Arlen Paranto, Hal Burlingame, Steve Cossalman, Steve Van Cleve, Joseph Price, James Kin, Jeff Stephan, Anne Dohoerty, Waylan Jumper, Mike Bertram, Charles McTee, Ervin Luke, Charles Pool, Lisa Benton, Aaron Laing and Mr. Bond for testimony.

Beach the next issue is impartiality. The Board of Adjustment Hearing is not only to be fair but to give the appearance of fairness. The Washington Supreme Court has said that it is axiomatic that whenever the law requires a hearing of any sort as a condition precedent to the power to proceed, which is true in this case, it means a fair hearing or a hearing not only fair in substance but fair in appearance as well. Materials that we receive as Planning Commission members says that because any quasi judicial decision is open to court review, all factors in a decision must be on record for the courts evaluation where one or more of the decision makers have interest or contacts outside the record that influence the decision. The rights of all parties to have the matter decided on the record maybe compromised. This

is why the court articulated the appearance of fairness. So this is just simply a matter of that we each believe that we can be fair but as also a matter of the appearance of fairness and so I am going to ask each of the commissioners to state whether they have had any ex parte contact with any with any person who is an opponent or proponent of this matter and whether they have been to the site or not and anything else that they think they ought to tell us that may be a matter of fairness. Just because they indicate something that appears to be involved here does not mean that they are unfair the fact that they have stated it and put it on the record is important that we then know. I will begin with myself, I have not had any contact with any proponent or opponent of this matter and so I have not discussed this substantially with any persons. I have talked to the staff about procedural matters on this. I have visited the site and I have no legal action against the community in terms of the airport.

Lind stated he has stopped a number of people from going forward when I thought they might be straying into this area telling that I could not get into it. I have visited the site by myself. I, on a regular basis, exercise on the airport so that I can observe things and I don't do it to observe things but being there from time to time I can see things but that is not a site visit on it. I am not involved in any litigation, I have no interest in this.

Frink has not visited the site. I have not affiliated with anybody that is a proponent or opponent. I am not involved in any litigation.

Schaub I have not discussed any of this information with anyone. I have visited the site, probably, three different times. I have walked the airport many times and walked in front of the area. I live in the airport zone. I am not involved in any litigation.

Valentine has been to the site but not on it, twice. I have not had any conversations of any significance with any one about the matter. I have no involvement, litigation wise, or any other wise.

Pruitt has visited the site, once, briefly. I have had three contacts, ex parte contacts, regarding this property. One was with a David Emul who is employed with Stewartship Partners doing work throughout the Nisqually Basin to promote low impact development guidelines. He indicated to me in a phone conversation that he had approached the developers of this property to promote low impact development guidelines. I told him that this was a property that might come before the Planning Commission, which I was on. I reported that communication to Chairman Beach and received his advise to continue to proceed as I had done. In the case of David Emul and inform people that I am not able to discuss the matter with them. My second contact. My contact with David Emul was a couple of months ago. My second contact was a few weeks ago, I received a couple of e-mails from Steven VanCleve, one of which is in our packet, Item N. The e-mails where Mr. VanCleve's characterization of what was going on with the development. I informed Mr. VanCleve that I wasn't able to discuss that with him for the same reasons that I have already mentioned. Going backwards, Mr. Emul neither represented himself as a proponent or opponent of the development. Mr. VanCleve indicated that while he had issues with the development he was not an a opponent of the development and that he had, at times, offered to assist the developers with any airport related issues regarding the development, that's how he characterized his position. I am also partner with Mr. VanCleve on a action before the Growth Management Hearing Board. That action was against the Town of

Eatonville. My part in this action concluded today with a hearing in Seattle, this afternoon, before the hearings board, with the Town of Eatonville present. It was very clearly stated at that board by the presiding officer of the board that all ordinances and regulations of the town are considered valid until indicated otherwise. Neither I, or anyone present, made any statements to the contrary, so, I am prepared to move forward tonight on the assumption that the current ordinances, specifically Ordinance 2006-6, which was the subject of litigation is the current valid ordinance of the Town of Eatonville. During the hearing Bob Mack, who represents the town as an attorney, did raise the question of whether the action being taken by the petitioners, Mr. VanCleve and myself was motivated by this particular development. While there was no response to that question in the hearing I can respond here that the action that I took, I can't speak for Mr. VanCleve, in relation to this matter was only on the merits of the ordinance as opposed to Eatonville's Comprehensive Plan took place before I had any firm knowledge of this development and was not in my part motivated by any position for or against the development at this point. I believe that concludes the account of my ex parte communication with my business to the site.

Robert Mack, Town Attorney

Mr. Beach, members of the commission the legal council for the applicant had indicated that there was a preliminary matter that he wanted to raise. I don't know if it relates to this issues, but if it does, it probably would be appropriate to hear from his also at this point.

Aaron Laing, Attorney representing the applicant.

We have three preliminary points, I can hold off the other two for right now, but one of the preliminary points that we need to bring is that we would ask Commissioner Pruitt to recuse himself prescient to RCW42.36010, which as Mr. Chairman you correctly and succinctly put it, requires not just fairness but the appearance of fairness in land use decisions. Although we understand and appreciate Mr. Pruitt's remarks about the hearing before the Growth Management Hearings Board today it is our feeling and strong abiding feeling that the opposition that Mr. Pruitt has expressed in his personal capacity toward the underlining regulation it would be impossible for him not to prejudge this application. What is before the board tonight is a simple question of whether or not the applicant, in submitting the application, has complied with the regulation. We don't believe that we have the appearance of fairness here when we have one of the decision makers who has already determined that that regulation, in and of itself, doesn't provide for the health, safety and public welfare among other things. So we would ask that he recuse himself.

Robert Mack, Town Attorney

Mr. Beach, members of the commission I haven't had a chance to speak to all of you about this but I think there are two issues but one is that the request by the petitioners in front of the Growth Management Hearings Board is to invalidate the regulation that you have to apply until it's invalidated and they have taken a position on that. If in fact, we proceed with considering the development proposal and it is approved and the commissioner and Mr. VanCleve prevail in front of the board, then if fact, it presents problems both for the town and the applicant because you will have approved the development under a regulation or ordinance that has will be invalidated at the specific request of one of the commissioners. I see that as an issue. A second thing is that the petitioners before the Growth Management Hearings Board have argued about the interpretation of the

ordinance and have argued in effect, and if I have misstated this the commissioner can correct me, that the ordinance as it now exists or the comprehensive plan as it exists and so if the regulation were invalidated the comprehensive plan would apply that the comprehensive plan prohibits certain structures if they fall outside the ranges height limits and bulk sizes under the Federal Aviation Administration Standards the town has argued differently. If that position correct, then in fact, as I understand that part the commissioner has taken a position at the hearings board on whether parts of this development are consistent with the comp plan. Now if I misunderstood your argument in front of the hearings board, correct me, but I think that it's true. I think it does raise an issue. I have not been faced with this before where you have a commissioner or a council member involved in a separate appeal.

Aaron Laing, Attorney representing the applicant.

There is a point of clarification here about the effect of the GMHB appeal and I think that it is significant not only for commission to understand this point but also for the general public because I know that we are probably going to have some testimony tonight about the merits of the underlining regulation and what is important to understand in Washington is that under the vested rights doctrine whether or not the Growth Managements Hearing Board ultimately issues an order of invalidity or an order of non compliance, in so far, as either this regulation is concerned or the regulation is perceived visa vi the town's comprehensive plan or the country's comprehensive plan is actually immaterial for the decision that is before the commission tonight. It is immaterial because GMHB orders that the Growth Management Hearings Board orders of invalidity or non-compliance are prospective. And what that means, by statute and a practical matter, is that our application vested of August of this year the ordinance was in effect as of February of this year and that ordinance is presumed valid and this application is going to be processed under that ordinance whether or not the Growth Management Hearings Board comes back subsequently and invalidates it. I will provide for the city attorney and for the commission some legal citations. Direct you to RCW3670A Section 320, Section 300 and Section 322. I would also direct the commission's attention to the two cases. One of them is King County versus The Central Puget Sound Growth Management Hearings Board the legal citation is 138 Washington Second 161. The other case is The Association of Rural Residents versus Kitsap County and the legal citation is 141 Washington Second 185. And basically what these cases say is that the job before the commission tonight is to hold up the regulation in one hand and hold up the application in the other hand and compare the two. This is an objective analysis. This is a non discretionary decision. And so the question is "If the regulation says you need to do A, B and C and the application does A, B and C the commission shall approve it. And so we do not want to get to far a field here talking about what that underlying regulation is or whether or not it complies because at the end of the day the issue whether or not it complies is immaterial.

Robert Mack, Town Attorney

Mr. Beach, members of the commission I have read those cases but not within the last week or so I'd have to look them up. I think they do hold as council said they did. You will proceed then on the assumption that the Comprehensive Plan and the regulation are valid. If one of them is later invalidated there may be issues but you and the applicant can rely on the current validity of the regulation. No one has asked the Board to issue any sort of order yet. The Board, by the way, the hearing was held today and the Board indicated

that it would issue a written decision by December 18th of this year and the town has asked, actual in effect, that the appeal be dismissed on most of the issues but remanded back to the town on at least on issue to clarify our regulations. There is no authority, as I know, to remove a commissioner as in the same way as there is no authority to remove a council member so it is really up to the individual commissioner whether he or she wishes to sit on something where someone has raised an issue remaining, however, on the matter does raise issues, if in fact, the commission where to recommend a denial or conditions that the applicant felt had been colored by the involvement of the commissioners. So the issues have been raised and it is sort of up to the commissioner to make a decision and if he decides to sit on this it does raise risks for both the town and the applicant, but that is sort of his call.

Beach I would also observe that in the record that we have of communications to the town, it is quite clear to me that Mr. VanCleve is an opponent of this application. The associate, then, between Mr. Pruitt and Mr. VanCleve on the base of litigation involving the very matter raises some question, certainly, in my mind about the appearance of fairness.

Pruitt I think I heard Mr. Mack and a representative for the applicant suggest a couple of things. I will go at them in reverse order. First, that one of the issues that we have to look at is that the current regulations are the current regulations and that any arguments suggesting that there are flaws in the current regulations or arguing against current regulations, objecting to current regulations as opposed to comp plan, etc. etc. Such as the arguments that occurred in brief that went before the hearing boards today are not appropriate. I think I heard the implication that it would be hard for people to believe that I could avoid such arguments. To which I do say Mr. Mack, in his profession, does exactly what being suggested that I am incapable of doing. Which is argue one side of an issue on one day and then turn around and argue another side of the issue on another day depending on his case and client. I didn't vote of the previous one either. To me the augment of whether there is a conflict of interest or an appearance of a conflict of interest is a little like suggesting that I was a strong proponent of raising the speed limit that I couldn't be trusted to adhere to the speed limit until such time that the law was changed. But that is just my personal opinion. I actually came tonight fully prepared to defend some of the elements of current ordinance 2006-06 that Mr. Mack himself attempted to suggest at the hearings board today where not really what 2006 meant to be. I'm fully prepared to look at this application on it's face value compared to current regulations. And at the same time I recognize that Mr. Mack has a good point that the appearance of conflict of interest may result in some liability for the town and I think that is an important factor to weigh. And so you are asking me to judge myself? I would be lying to you and to the public if I said I was incapable of being impartial on this matter and judging it on it's merits. I also recognize that the decision is left up to me that I can quite possibly receive more guidance just as we have heard from Mr. Mack and from others. With the Chairs permission, given that we have months and years of experience together here on the commission, I'd like to hear from the other commissioners and see if they feel like I'm incapable of impartial and that I'm incurring an unjustified risk for the town.

Beach let me say that it isn't a matter of your capabilities. It is a matter of the appearance. You maybe perfectly capable of being fair and dismissing and so on but the question of the appearance of fairness is the real issue at least as I see it.

Pruitt so the answer to my question, in your case, is that you would prefer that I recuse myself?

Beach I would prefer that you do.

Frink I personally think you might be an asset. I understand that there is a liability there. But there is probably a liability here every time you open your mouth. My option is I'd say stay.

Lind (did not speak into the microphone.) From notes Mr. Lind would prefer that Mr. Pruitt recuse himself.

Schaub I feel Mr. Pruitt has the knowledge and his experience on the planning commission to weigh the issues before us, but, this point that has been brought up, I think, he needs to step down. I am sorry to see that and I'm sorry to have to say that but I just feel.

Pruitt you wouldn't have had to say that if I wouldn't have asked you, so don't worry about it.

Valentine I too feel like Mr. Schaub. I have been here such a short period of time and I have found Mr. Pruitt to be nothing but fair and objective in his approaches in each of the issues that come before the planning commission. However, I do feel that is a matter of such importance that the appearance of fairness doctrine should be held in this most integrity point. Therefore, I agree that you should step down.

Pruitt if I should step down and I am no longer participating as a member of the commission and have not been sworn in, does that mean I am not to testify in this matter as a private citizen as well.

Robert Mack, Town Attorney

I don't know if there are any cases on that issue to be honest with you. Generally speaking, I think that there is a case where a council member, actually, on a city council. Wait, I may have lived through that on another council, I'm trying to think. Mr. Pruitt is going to think that I am antagonistic to him. But the better course of someone steps down is not to participate because the person still has ties to the board through votes and relationships and it simply, I think, the better course is then not to participate.

Pruitt I am going to step down, but I am going to step down with one comment and that is that Mr. Mack doesn't get to decide what I am going to think. I actually appreciate his comments and for the integrity of the process and for the good of the Town of Eatonville I'll recuse myself from this and I will not participate in the discussion on it.

Aaron Laing, Attorney representing the applicant.

First of all I want to thank the commission for it's thoughtfulness in that process one the appearance of fairness doctrine. And especially thank Commissioner Pruitt for his thoughtful, humble and reasoned approach there. It's a reflection on the commission as well as Mr. Pruitt and as well as the town. Generally in land use hearings I like to get up and thank the town for coming out, whatever the community happens to be. It's kind of a

special night here given we are here in an election cycle and we walk in and see the ballot box and we start the meeting with the pledge of the allegiance because that is one of the privileges of being part of this country and community here and what makes the land use decisions Washington not wholly unique from everywhere else but it is somewhat unique from other places is the public participation and the constitutional rights that we have under the U.S. Constitution but the Washington Constitution. One of the things that I think is important in going into this process thought for everyone to understand is that although we are a democratic nation and here we are just about to go election day tomorrow, land use decisions themselves are not democratic. These are quasi judicial decisions. What's important about that is that it is not a majority rules sort of decision. The land use decision where a majority rules decision then no development would happen because all you would need are to opponents. One developer the projects done. But that is not how it works. As I mentioned earlier you heard me make reference to things like the vested rights, which is a doctrine under Washington law which protects development rights so that there is some certainty in the development process.

Beach if you are essentially in an argument for your client. I thought you had some procedural matters. I think that can be held until you are able to make your presentation for your client.

Bond introduced the planning commission Findings of Fact, conclusions and recommendation for both the plat application and for the variance application. The town planner has concluded that the application for preliminary approval of the Aviator Height Plat when combined with Board of Adjustment issuance of a variance for reduced lot area and width in lieu of the dedication of assigned hangers and in addition to the conditions as recommended and meets the requirements of chapter 17.20 and 18.04 of the Eatonville Municipal Code. The town planner recommends that DN Property's application for preliminary approval of the Aviator Heights subdivision be recommended and forwarded to the Town Council for consideration and approval subject to the recorded conditions. It is the finding of the town planner that this variance proposal results in a superior design to what would otherwise result by adhering to the EMC aerospace zoning code. This variance will result in an aerospace residential development which is both compatible with the airport and safer from the perspective of the potential mixing of automobile traffic within a public right of way. It will eliminate potentially dangerous taxiing of aircraft on the inclined surface, and it will facilitate a future road connection from Weyerhaeuser Road North to Lynch Creek Road. The town planner recommends that DN Properties application for a variance to allow reduced lot sizes and lot widths in lieu of a dedication of land for assigned offsite airplane hangers be approved subject to the recorded conditions.

Beach on page five, paragraph G, it says hangers do not qualify as parking spaces for automobiles. I realize that that is, they can't count that as the spaces that they have to have for each lot for parking. I have somewhat the converse question. Can they never the less be used to park automobiles?

Bond unless a restrictive covenant or something otherwise would say that an automobile cannot be kept in a hanger there is nothing to stop that from being used as parking. However, the parking requirements of the EMS still apply to the individual lots which are located above. I think the situation that occurs with a lot of the pilots at the airport that they

would drive their automobile to their hanger, park their car in the hanger and then pull the plan out and lock up the hanger.

Beach I wasn't thinking of the incidental use of the hanger as a garage. I was thinking of the deliberate use of the hanger as a garage.

Bond that would be up to the applicant to have some sort of restricted convenient, but it is not something that is regulated by our ordinance.

Beach I would like the applicant to address that issue.

Beach on page seven you do comment that we have not heard from the FAA. We cannot finally approve this until we have gotten that response and you have told us that doesn't encompass any serious issues or if it does encompass any serious issues then it needs to be brought to us. So we will have to hold the hearing open.

Bond I would leave that question for Mr. Mack to answer.

Robert Mack, Town Attorney

It's a very good question and it did come up at the hearing today. Let me try to address this. The ordinances adopted by the town says that the proposed development application is to be submitted to the FAA for review and comment by the applicant. I looked through the record as Mr. Bond was making his report and it appears that was done. Then it says that the Town Planner shall review and evaluate the comments made by FAA and as a result make condition the application by imposing safety requirements in response to the comment. Then it say that in the event that the Town Planner upon reviewing the comments made by the FAA determines that the proposed development application is implemented has a probable substantial adverse effect on the public health and safety, etc., that he is authorized to present the proposed development application through you for review. There is another section that suggests that the decision could be made either before the FAA comments or contemptuous with their review but I told the board today that, it seems to me, the best reading of all of these sections, is in fact, that you would not make your recommendation until you have the FAA comments. Otherwise it sort of a empty exercise otherwise on the part of the FAA. And so then only after you receive their comments and the further review of those by the Town Planner would you proceed. That leads me to think and I have not checked with the town officials on this that whatever you do then may have to be continued until those comments are in. The comments do not dictate what you do, at least, unless the hearings board tells us they do. But I think they have to be received and considered. Now if they take an inordinate delays or something that's another issue you may be able to proceed.

Beach what do we mean by condominium hangers?

Bond the idea is that under the RCW, which establishes the provisions for condominiums. The individual hangers when constructed would be assigned a tax parcel number when the condominium, itself, is recorded. However, another condition of this is that the condominium be attached to the lots and this is accomplished through the establishment of and the recording of a neighborhood association which has covenants and restrictions, in

which also, establishes that connection. And that is something that would be accomplished before the final plat is recorded but after the approval of preliminary plat. This would insure that all 27 lots would have access to a hanger. But that the hanger, itself, would have a separate tax parcel number from the lot but they would be connected through the neighborhood association and the covenants which have to be recorded.

Beach would each property owner be required to pay for and build a hanger?

Bond no they would not. And under the existing airport code without getting to much into the variance issue on a full size lot, as Mr. Schaub knows, he was not required to build a hanger at which time he made an application for his own building permit but his lot, simply, had the capacity for a hanger if he so chose to build one. This situation the purchaser of a lot would have the ability to build a hanger as part of this condominium association and therefore the lot has the capacity to have that aircraft.

Beach part of the argument, as I understand it, for having these hangers down there is so that the airplanes will not have to go up the grade. Which sort of suggest that Mr. Schaub's situation is a very different situation than what we have here. Would these hangers, which are down on the runway itself, and so it is conceivable then we will sell 27 lots and not a single hanger?

Bond that certainly is a possibility but the purchasers of those lots would have the ability to possess a hanger in the future. They always got that potential just like Mr. Schaub does. I don't know if he set up his property this way but his son's house, I know, they located on the lot so that would have room in the event that they sold their house to somebody that wanted to build a hanger. And we are going to have to deal with this issue of the grade of the road, in which time, somebody proposes to build a hanger which would be taxiing up an incline. We have not had to face this as of yet.

Beach there is no provision in this that actually requires this to be airplane related?

Bond there is no provision in the 2006-6 that requires this to be airplane related. There is reference to, I think, the first sentence under the zoning code, that's page four, and it says that the district is intended to allow airport related activities, such as, runway flight operations, etc. on down to residential land uses. It is intended to allow but your not required to provide.

Beach in the traffic study, which is whatever exhibit it was, on page thirteen it says that this will be a gated community. Is that true?

Bond it is not going to be a gated community. That was their initial proposal when we first started having preliminary discussions regarding this development and we had told them that a traffic impact study would be required so they went ahead and did it under the assumption that it was what they wanted as gated community but which the town was declined to recommend.

Bond introduced the planning commission findings of fact, conclusions and recommendation for the variance application. It is the finding of the town planner that this

variance proposal results in a superior design to what would otherwise result by adhering to the EMC aerospace zoning code. This variance will result in an aerospace residential development which is both compatible with the airport and safer from the perspective of the potential mixing of automobile traffic within a public right of way. It will eliminate potentially dangerous taxiing of aircraft on the inclined surface, and it will facilitate a future road connection from Weyerhaeuser Road North to Lynch Creek Road. The town planner recommends that DN Properties application for a variance to allow reduced lot sizes and lot widths in lieu of a dedication of land for assigned offsite airplane hangers be approved subject to the recorded conditions. The decision on the variance I don't know if it can be made this evening or not. It is not contingent on comment from the FAA.

Beach by accepting this variance we do not get any improvement regarding hangers. The hangers are in the same place as the original map. So why the variance if it isn't just to gain four lots?

Bond the original proposal, as it was written, had track C being designated for hangers, but not hangers which would be assigned to any particular lot. This meant that planes would potentially be taxiing to the lots, which are 21,500 sq. ft. as permitted by the zoning and you would have this mixing of pedestrian traffic, automobiles and aircraft. Our solution to that problem because we did not want planes taxiing on a runway. This was something we negotiated with the developer and we said make the application for the variance that would allow your net density to dictate how many lots you would be able to create from these two pieces of land and divide by the minimum lot size. Because of this you have to actually assign these hangers to each individual lot. Under the initial proposal those hangers were not proposed to be assigned and the code really does not have anything specific as to whether or not planes can taxi on streets. I don't think that anybody, most the people, here would agree that taxiing planes, driving cars and people walking on the same street is not a good situation and would be potentially unsafe. In additionally I think it was brought up in the public hearing for 2006-6 that planes should really not be taxiing on inclines. Especially in the presence of those three groups.

Beach I have difficulty buying all of that argument because if you can restrict them off of the public right away on map B you can restrict them off the public right away on map M2. If you are going have condominiums or assign them, and I still don't know what condominium are in this case, assign them particular lots on map B you can assign them to particular lots on map M2. I having great difficulty understanding the difference other than four lots.

Bond the other issue here is that the underlying reason for lots which are a half and acre in size, 21,500 sq. ft. is that those lots need to be both big enough to accommodate an airplane hanger and also wide enough to accommodate that hanger so that somebody can keep their plane on their property. That is the underlying justification for that lot size. If you are going to restrict somebody's ability to keep the plane on their property that justification for the lot size goes away. If you look at 2006-6, the other point is, the underlying density within the traffic pattern zone is four units per acre and not two units per acre. The reason for the half acre lots is to accommodate a hanger and we are allowing the applicant to transfer the density to eliminate the taxiing of planes in exchange they able to get four additional lots. I

think that we would have a hard time requiring 21 half acre lots and prohibiting the taxiing of planes.

Beach I don't know why we would have any trouble at all. And why couldn't we just prohibit building of hangers on those lots for the reasons that you give for not having the airplanes.

Bond because hangers are permitted under the zoning code. It's a principally permitted use. I think that any regulation to the contrary would be in conflict with the zoning regulations. Bob may have to weigh in on this one.

Mart Kask I think this is possible, this can be made a condition of plot approval. The applicant may have arguments why that should not be done but it certainly is a discretionally decision of on the part of the Planning Commission Board of Adjustment. The other commissioners reserve their right to question at later time.

Kevin Foley, principal with the engineering firm of Baseline Engineering. 1910 64th Avenue West, Fircrest, WA 98466

Mr. Chairman, in your packet , Exhibit B I think there is a number of maps. Those were, principally, and for the most part prepared by my firm, Baseline Engineering. I would like to take about all four of those in some respect but I there has been a lot information given to you in the form of the staff report and also the testimony given to you by the town planner and I am not going to try and repeat some of that but I think I am up here able to clarify, maybe, some of the concerns that I heard in regards to questions that you posed to Mr. Kast and Mr. Bond. First of all, Mr. Chair and members of the commission I would like to refer to the preliminary plot map and that is called Aviator Heights, that's the one with the darkened road, and that's map B. It is the applicants intention to provide a upscale 27 lot subdivision in this particular case it will be accessed via a single cut to Weyerhaeuser Road. It will continue west and then move northerly over approx. 1300 lineal feet and terminate in a cul-de-sac. All lots will obtain access directly from that new road and also be a public road. There will be no private security gate. That was talked about initially and that was modified and the plans that you have before you in packet B are all intended to be public roads. One of the concerns that I heard in regards to road A, it's a T shaped road essentially but the T, what would happen to vehicles continuing from the paved portion of the road over and across the future right-of-way. I think that there is a simple answer that Mr. Chair and that is the use of a barricade or bollards. We are just as interested as you are that nobody gains access to our property that shouldn't be there. And so until the city presents us a plan to connect the road Lynch Creed Road and the school we will reserve that right-of-way and we will show that clearly on the face of the final plat when it is recorded. But at this point until it's needed for public use it will be controlled in a barricaded, bollard fashion. Topographically speaking Mr. Chair there is really a significant issue to be made here and that's the fact the residential portion of the Aviator Heights application is located approx. 20 feet above the grade of the runway. In addition to the 27 lots we will provide, and very important to this application, is the existence of proposed, three separate tracts. Now tracts A and B will be bisected by the new road configuration that is going to be either as shown here or it will be pushed down a little bit. The staff has requested that we make that change at the sight development stage where we present the detailed engineering plans. But, none the less, tract C is proposed to contain approx. 27 aircraft hangers. Tract A and B

are whatever final configuration they will be they will obviously be split by future public road. But the uses for those tracts have not been specifically identified at this particular point in time but will be strictly in accordance with Ordinance 2006-06 in terms of its future intended uses. We mentioned earlier that the track study was completed, there was certain discussions in regards to off sight improvements. Staff has conditioned this application to comply with those off site requirements and the applications have agreed to those. I might also add Mr. Chair that the traffic report did an extensive study of the surrounding intersection and road networks and with the traffic of 27 lots we will maintain a level of service A or B which is on the best service available. The density, I think that is important, Mr. Chair the density whether it is 23 lots or its 27 lots is still approx. 2 dwelling units per acres. Which is low density for an urban setting, urban town with in city limits. Also, just to wrap up a little abit on the preliminary plat map as part of exhibit B there are, as Mr. Bond has indicated, there are no wetlands, there are no stream corridors, there is no abandoned mine shafts and there is no isolated drainage basin's. It's a piece of property that does not have natural physical constraints. Moving to the, if I could draw the commissions attention to the over lay exhibit map. Mr. Bond indicated in his report that the maps, all the transition zones, approached zones, the primary zones all kinds of the zones that were in your ordinance we have attempted to make clear what exactly those are and apply them to this specific piece of property. I would like to draw the commissions attention to the little box at the bottom of the page that shows the profile. That is a very important profile because that is our professional opinion of exactly what your ordinance says in regards to height of structures. Visa vie are the preliminary application of Aviator Heights. As you can see from that particular diagram, building to 28 feet and we took a worse case basis, we moved the house basically on top of the 852 contour and the 5 to 1 profile still allows that building at that location. We don't anticipate a worse case scenario here. We anticipate that that building will be much closer to the 25 foot setback as required in the code so that there would be an even lowering of that scale in terms of the visa vie the 5 to 1 profile line. I did notice, Mr. Chair, and we would like to introduce another exhibit, maybe we could mark that Exhibit B1. It's the exact same map as the overlay exhibit map but one of the zones we didn't label real well was the runway protection zone as well as the interturnin zone three. With your permission Mr. Chair we would like to add that to the record as Exhibit B1. Again it is the same one as B but it just adds couple more zones. The last two exhibits that we prepared as part of your packet have to do the utility plans but there were a couple of questions raised in regards to the condominium and I think I would like to talk about that for just a second. And its association with the requested variance. Your correct Mr. Chair and we are not going to stand up here and say that we not getting something from this. We are getting four extra lots. But you have to understand that what we think that we are extending to the town via its intent of its ordinance because we look at the ordinance as establishing two principal uses, storage hangers and single family residential uses. Now in return for the grant of the variance we have chosen the condominium tool as marrying the purchaser of lot 16 with unit 16 in the condominium. In other words we are going to, as part of our marketing strategy, we are going to insure that every lot owner in Aviator Heights is tied into and purchasing an aircraft hanger.. I don't know how to better able to do it. The condominium will create those 27 spaces if there is room for another one we'll likely provide that. But for a minimum of 27 spaces, those 27 spaces will be assigned each lot. Lot 1 will get space 1 or space 6 but there are 27 spaces available it is the responsibility of the owner to build that aircraft hanger and we might put up a model as part of our marketing stragety to attract that buyer that's what we will do. But we think that the condominium tool by

recording that concurrently with recording of the current plat will insure that there is a connection forever and ever between the lot owners and the aircraft hangers. Right now we believe that the ordinance is little bit gray in terms of requiring that connection. We want to close up that connection and provide a rigorous connection between the two. And in return we believe it is appropriate to the commission to consider the grant of the variance. It is like Mr. Bond said it is kind of a density transfer, kind of a combination. All lots in the subdivision will be without the burden of having a large accessory structure on the lot. If I can draw your attention, and we haven't entered that into the record yet, but the colored rendering. That is our intent from a marketing stand point of what Aviator Heights will eventually look like. The separation in having those type of detached structures and I think that we all can think of incidents where detached structures you have a nice principal use and all of a sudden a metal framed accessory structure and that doesn't really work well in terms of our overall vision for Aviator Heights. We believe the separation, the grade level, ability to develop these hangers in the appropriate location best serves the overall public interest and our marketing upscale claim for Aviator Heights. Now we also talked about, and there was some question about tract C. How are we going to get there? Well tract C in terms of as probably on this map here we have got preliminary spaces. We have done some research to determine that 42x36 is an excellent size for a regular size Cessna aircraft. It has a normal wingspan of 36 feet, normal door size of 40 feet, it will fit right in there. That's not to say that there could be some adjustments to that through the condominium and we make some of those combinations. One of the things that we wanted to carefully do is to provide adequate access. Not only for the future lot owners to get to their hangers as safely and as quickly as possible but to make adequate provisions for fire safety. So what we have shown on exhibit B is a 24 foot wide fire access. Now normal it has been my experience that 16 to 20 feet is adequate fire access. We have also provided gaps in between the attached buildings for moving of people around and through that thing. But also in front of the hangers is another 25 foot set back. It's all contained on tract C, it's all our property we intend to develop that with a hard surface. Probably in the form of asphalt, though it will allow that particular aircraft to exist that hanger and come on to it's sort of landing that still on our property before going onto the airport property which is not our property. That's a public facility owned, by my understanding, by the town. I would just like to point out that there is adequate from the public road onto the back side of the aircraft hangers as well as the front. Some adjustment in terms of depth but from our research 36 to 40 feet appears to be the standard hanger size. We think that we have accommodated that and we think that we have come up with the logical arrangement for the plat to separate uses but at the same time tie them together. A couple of final remarks Mr. Chair. We also have, and the staff has been very interested in looking at composite utility maps. Any municipality we deal in these days requires preliminary utility maps be drawn up for review and approval at least preliminary by the town. What we have here on this particular diagram road and storm drainage. Now road and storm drainage one is usually consist of a series of catch basins and there are pipes going all over the place and what have you. The staff has specifically asked us under their code to consider low impact development. Low impact development is a form of storm water treatment that is sensitive to the environment and provides a treatment process much quicker and more effectively than a standard treatment system. So in terms of low impact design we hoped to achieve and the town has given us a preliminary blessing to move forward with that as well as we have received some input from the Nisqually Organization interested in us pursuing low impact design. Which essentially means the traveled path and a large maintained bioswell. Now the condition of this site in terms of it's

soil capabilities is excellent for this. We are fortunate to have some thing like that but the road profile will be hard surface, bioswell, appropriate landscaping and five foot side walks. One of the requirements that the town has imposed and which we have agreed to is an extensive complete side walk system that will serve residents of the plat get them out of the plat and down Weyerhaeuser Road to Center Street to allow for connection to school facilities and shopping facilities. The last one that we have is down there on the end and that is water and sewer as the staff has indicated in their report. Those utilities are readily available to serve this site there are relatively easy and logical extensions and will readily provided but the one that I just wanted to emphasize just a little bit was the one where we have committed to the town that we will incorporate a low impact design and I think that realatively new and innovative for the town in terms of a sub division approval. With that Mr. Chair I'd be happy to answer any questions. I know our legal council has a few remarks as well.

Beach you say that this an upscale development. Has there been any marketing studies showing there is a demand on the part of aircraft owners for such a subdivision in Eatonville?

Foley I am not aware of one. I know DN Properties has done some initial research into that. Obviously they are going to have to step that up considerably because of the concessions that we have made in terms of the separation and the connect between the storage hangers and the new residential buildings.

Beach will the sale of these lots and occupancy, in any way, be restricted to aircraft owners and operators?

Foley that is not our intent. I don't think we have that ability even if we wanted to.

Beach are the owners required to build a hanger?

Foley no.

Beach what is the difference between this sub-division and a typical sub-division except that we now have large detached garages? I don't see a connection you say that this is on a airport and it's for airport users and so on but there doesn't seem to be any connection between actually the sale of the property and air craft owners and its seems to me that what we are doing here is, well they may be hangers or large detached garages or storage buildings that people have and so other than that difference what's the difference between this and any other sub-division?

Foley that can be controlled through the condominium declaration and homeowners association that will be developed in accordance with the finalizing the plat.

Beach that they have to use it for aircraft use?

Foley that would be the intent.

Beach would you object to us putting that on as a condition that these detached buildings could only be used for aircraft use?

Foley Mr. Chair could I ask you to allow me a minute to consult with the applicant. After discussing this with the ownership we agreed that if the town so desires we will limit those to strictly aircraft hangers.

Beach if that turns out to be the idea the commission adopts then, of course, that would have to be a condition. There would be such language.

Lind Plats A, B and C that's part of this whole process that you are going to split this land into three parcels. Is that correct?

Foley that is correct. The plat application includes 27 lots and three tracts.

Lind they will be listed with the country as separate tracks. Track A will be separate parcel number.

Foley that is correct.

Lind track B will have the hangers and some stuff on the very end of the runway.

Foley at this point we don't anticipate hangers on track B that's not to say that they won't because hangers are permitted use in the aerospace district. But right now our intent is just to concern ourselves with track C.

Lind in track A with the restrictions what could be put in there?

Foley I would have to consult with ordinance 2006-6. There is limited permitted uses and we would be restricted to those uses as controlled by that ordinance.

Lind my concern is with that and maybe B also is that we don't, in splitting them up, create a parcel of land that might not be able to be used for anything because of the restrictions on the imaginary surfaces. I don't think that would be a wise thing to do.

Foley one of the things that the staff has asked in their staff report is for us to identify, prior to final plat approval, what our intended uses for tracts A and B. I have a problem with that in terms of we do have a zoning structure, a zoning overlay, a zoning district that specifically tells us what our permitted use activities are and I would ask the staff to reconsider that in term of allowing us to develop those properties in accordance with that ordinance. It certainly is not going to residential, but it could be any other permitted use that's allowed under that ordinance.

Bond I would just like to say that one of the other requirements that I outlined as a condition of the plat was that a fee in lieu of open space dedication be provided or a actual tract of open space be provided. I think that one of these tracts is not viable for any type of development given the underlying zoning regulations one of those tracts would be suitable for open space. Additionally I have required that there is a storm water facility which could

accommodate excess storm water in the event of a high rain fall event. Potentially that type of storm water facility could be located in one of those areas. That type of dedication could be required as a condition of the approval. I think one of the allowable uses under the aerospace zoning is aircraft tie downs and I don't think that a tie down no matter where it is located unless it would be in the primary zone could be permitted on either of those tracts and I think that that is a use of land which would if that was not allowed we would have an issue where we would create a tax parcel that potentially would not be permitted any type of economically viable use and this would be somewhat of a takings issue but I think that the fact that tie downs are allowed we avoid that.

Lind the road as you show it you are going to bring it down and pave it only as far as, parallel to the runway on it. The T section of the road. If the people want to access down to their hanger there going to be driving through mud. It seems like it would be better if that paving was continued down until it got it down to the elevation of the runway.

Foley I agree. The staff has asked us to move that road further to the south. We're going need to take a look at seeing how one part of that T or some other derivation is going to be appropriate to adequately serve for vehicles and pedestrians access to tract C.

Lind utilities. You've got drawings of utilities and our normal procedures is we don't normally see maps showing the utilities and by the actions that we take we would not be rendering a judgment on the specific drawing. Did you intend something different by including those maps at this time.

Foley no all our intent was to show the town staff that it was possible to serve this sub-division with utilities. We did not mean to represent that it was the final, this is by no means the final, those will be once preliminary plat approval is in hand then we will develop the detailed engineering drawings for submittal to the Dept. of Public Works as part of the town. Our only purpose in providing those was to satisfy a city request and include them in your packet to show that utilities as part of the sub-division required findings, adequate facilities, services and utilities are available.

Schaub foot traffic, car traffic in front of those potential hangers for people to get down to them. And you mentioned that you would asphalt the front of the hangers out 25 feet but you still wouldn't be covering enough area, you would still have a muddy area going from that out onto the gravel taxi way.

Foley good point.

Schaub another point is that almost all aircraft take off from the north to the south so that means that the aircraft coming from these hangers will have to taxi up north in order to take off and right now they would have to taxi up the runway. There is really no taxi way. Have you thought about doing any taxi way preparation in front of the hanger area or the town thinking of taxi way with that number of potential aircrafts being used for that airport?

Foley I think you have raised a good point. I think that during the final engineering design that we need to come up with a way of providing safe access to the main runway and those

taxi ways if there is something there that we need to do because of the intensity of Aviator Heights then safety concerns are paramount.

Schaub lot size 100 feet on the west side and the lot depth is 153 feet which includes all the distance going down the hill towards the hanger. That includes the slope going down from east to west. How much lot area do you have at the top for a home.

Foley the lot area includes a substantial portion of the slope area. *Stepped away from microphone.* One of the things that we have done and which we have not provided to town but will be provided at time of final engineering is a detailed geotech report. Geotech reports we would ask them specifically for foundation design recommendations for any part of any building within ten to twenty of a moderate slope area.

Valentine *did not speak into the microphone.*

Bond the idea is that when you purchase the lot you are buying part of condominium and whether or not you want that condominium to exist depends on your willingness to pay for the actual structure. How exactly this is going to be orientated is something that has to be worked out as part of the creation of the condominium. The language in the condition in the language that I have written sufficiently describes this connection between the space for a hanger and the lot itself.

Valentine would the home owner be able to build anything other than a hanger.

Bond on tract C, no. It is reserved for that specific purpose. As the variance is proposed the town would not entertain any use because those hanger sites are justification for reduced lot sizes above. If the lots up above were reduced to the initial proposal of 23 lots and just tract C just existed for the construction of anything from hangers to tie downs to some other facility that would be a different story.

Beach some how or another we keep shifting gears here. As long as we are talking about 27 lots we keep talking about these restrictions on the hangers. Why can't we talk about the same restrictions if it's 23 lots?

Bond with 23 lots there is not requirement for them that exists in the code for them to provide these hangers down on the runway. The code says that they can have hangers on their lots.

Beach but that can be a condition of this. As I understand Mr. Kast he says we can do that.

Bond we can do it. The idea of the 27 lots with the assigned hangers down below was something that the staff negotiated with the developer in exchange for concessions including LID techniques for storm water on the site in exchange for the dedication of the public road, in exchange for all the other requirements which we have set forward which may or may not be, they would qualify as roughly proportional to the impact of this proposal but the developer has been more than willing to make the other improvements and the other concessions that we have asked for and this is something that we are doing in exchange for those concessions and we feel that we have a superior product as a result of that negotiation.

Beach I don't know why we can't get all this stuff in 23 lots?

Bond if the Planning Commission wished to require 21,500 sq. ft. lots I think that it would be, in my opinion, it's acceptable to require that they place those hangers down below and on the lots but I think you are defeating the purpose of our minimal lot size by doing that and your requiring them to designate more land than is necessary to accomplish what is specified by the zoning code.

Valentine I understand the ordinance here it says that there can be some conditional uses. *To far from the microphone.* If lot one wants to put a hanger, lot 2 doesn't but they would like a storage building. Can they come in and say look you allowed to have a hanger down here but I really don't want to fly an airplane I just want to store my tractor.

Beach as I understand it the applicant has agreed that this will only be for aircraft use. If we put it in there.

Bond in the establishment of the condominium has to be approved by the town and accepted by the council as part of the final plat process so if it is not to the satisfaction of the conditions then they would have to go back and make those adjustments.

Valentine this may or may not get into it. Can they apply for any other use of that particular lot in their conditional use permit?

Bond a conditional use permit pertains to a list of uses that is contained in 18.08 of the municipal code. There are other uses which are allowed in the airport zoning which do not require a conditional use permit but are permitted unless you establish a condition which would specify otherwise.

Valentine it would be important for the commission to agree to make that part of the acceptance of the plat to be only used for hangers.

Bond a condition that said that the condominium declaration shall be written so as to limit the uses of the hangers to airport related use or aviation related uses.

Aaron Laing, Attorney representing the applicant.

Just two points, it was raised earlier during Mr. Bonds presentation the issue of what the effect of Sub Section H the FAA review and I believe that the city attorney addressed this and I just wanted to provide the applicant's take on what the effect of the language is there. Essentially there are a few shalls in this provision and the shalls are that the town planner shall review the comments, the FAA comments shall be submitted and so we have no question that we need to get comments submitted and that Mr. Bond needs to review them. As for the impact on the overall review by the commission what we have here is not mandatory language which is may and the outcome, the final decision that could be made by the FAA comments by the planning condition it refers back to Sub Section D2 and if you look at the ordinance Sub Section D2 refers to basically conditioning the proposal on trying to address whatever those potential safety impacts may be. It's not a question of whether or not the Planning Commission would deny the application, ultimately, based on what the FAA provides. It's just a question of how it would condition it. Just wanted to provide

some clarification on that. The other point is just as a policy point for the 27 lots versus 23 lots I think that Eatonville like many if not most and perhaps all communities in Western Washington are starting to feel the pinch under the Growth Management Act and the pressure to develop within a Urban Growth Area and the pressure to keep development from expanding outside into the rural areas and one of the ways that the Growth Management Act and our State Legislature have tried to facilitate that is to encourage building to the building densities that are designated within the Urban Growth Area. The Urban Growth Boundaries are set based on a calculation of what the buildable land is and how it is zoned and so as the town here deals with a growing population which all communities in Western Washington are dealing with it is both within the towns best interest as well as not having to deal with the Growth Management Hearings Board and some of the other legislative issues that come along with complaining with the Growth Management Act to look at those situations where you have the density there and look at projects that will help you build to that density. Technically we could apply for about 35 to 40 lots given the amount of land that is out there if we were just looking at doing purely residential stuff. What we are looking at is trying to do an aviation related community which is why have come up with the idea of condominiumizing the hangers and requiring people to purchase them. It creates an economic incentive for people to have an airplane so that they are not paying this extra money for a lot that they can only use for an airplane. We have set it up that way and we have no problem with the commissioners conditioning that way but we also see that we can help the town here comply with the growth management act requirements by getting the additional lots in there and that is, as Mr. Bond stated, the purpose of having those minimum lot sizes.

Beach in the letter that was written by Mr. Tift to the FAA on September 7, 2006 it says and I quote “The City of Eatonville has now approved this project”. What does that mean?

Laing I’m not certain because I am not Mr. Tift. I will confess that I probably have read that letter and didn’t gather the weighty significance of that phrase. My understanding is that generally how this would go is the planner would look at the proposal and once the application is deemed complete it goes before you and Mr. Bond would make his presentations so that may be an overstatement in your eyes.

Beach it’s an overstatement and it is also a possibility of misleading the FAA as to what is going on here.

Laing one of the things to keep in mind is the FAA is not the permitting authority here. The FAA does not have any jurisdiction over this property. The FAA can’t make the decision and so apart from providing the technical information that you see here before you to FAA. The applicants burden with FAA ends there. If there is a misstatement there that is certainly not going to be dispositive of what the FAA comes out and recommends. There going to look at it from technical perspective, there going to look at their regulation, there Part 77 regulation and there going to make a determination based on that.

Schaub on the hanger area what type of utilities, like water, lights, electricity, sewer?

Foley we would anticipate fire flow so there would be water service in the form of fire hydrants and we would also anticipate power. I can’t conceive a need to extend any type of

sanitary service to these hangers. There might be a request for a toilet facility in maybe some of them. It is very easy to provide stub outs to any number of these hangers should that particular owner want to install that. With the towns permission that that connection be permitted.

Lind we have had a number of discussions on the T design where there are several lots to the south of the T. But I think the preferred one is one where it is moved all the way to the property line the 30 feet. Is it possible to see a drawing actually rendering that?

Foley yes work out a drawing that relocates the road to the southerly boundary and make some lot line adjustments to accommodate the new road location.

Frink *did not talk into microphone.*

Foley we can certainly work with town staff and maybe the airport manager to get some direction and some feedback from those folks as to how we can access the runway. The runway shown on Exhibit B is very accurate, it is surveyed in, so it is precisely where it is shown and represented.

Schaub have you approached the airport manager in anyway with a review.

Foley I have not but I believe the town planner has.

Bond *spoke away from microphone.*

Lind we have previous testimony on other situations that the center line of the paved runway is not coincident with the land on it. Do your drawings reflect where the center line or the paved runway is in relationship the right a way?

Foley yes. We have located that paved portion in the turn around of the runway in relationship to it's specific property boundary.

Lind so the set backs are reflective of where that . . .

Foley if you taped it off in the field it would match.

Beach we will have to continue this hearing at the November 20, 2006 meeting.

MSC to continue the hearing to the next scheduled meeting on November 20, 2006 at 6:00 pm.

New Business: None

Old Business: None

Public Comments: No comments.

Commissioner Comments: No comments.

Next Meeting: November 20, 2006 at 6:00 pm

MSC to Adjourn at 10:22 PM

PC Chairman, Philip Beach

PC Recorder, Karen T. Bennett

PC Secretary, Bob Schaub

Eatonville Planning Commission

PO Box 309 . 201 Center St. West
Eatonville, Washington 98328

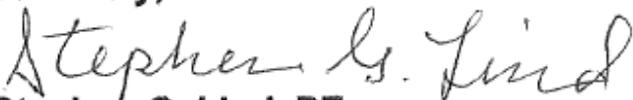
January 3, 2007

**The Mayor of Eatonville
And
The Town Council
PO Box 309
Eatonville WA 98328**

**Transmitted herewith are the adopted minutes of the Planning
Commission/Board of Adjustment for the following meeting:**

**November 6, 2006
November 20, 2006
December 4, 2006
December 18, 2006**

Sincerely,



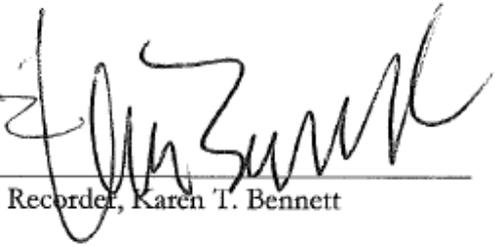
**Stephen G. Lind, PE
Chair
Eatonville Planning Commission/
Board of Adjustment**

Next Meeting: November 20, 2006 at 6:00 pm

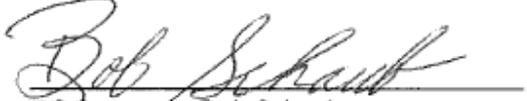
MSC to Adjourn at 10:22 PM



PC Chairman, Philip Beach



PC Recorder, Karen T. Bennett



PC Secretary, Bob Schaub