

**Town of Eatonville  
PLANNING COMMISSION MEETING  
MONDAY 6:00 PM, NOVEMBER 20, 2006  
COMMUNITY CENTER  
305 CENTER STREET WEST**

**MSC- Motion, Second and Carried.**

**Chairman Beach** called the meeting to order at 6:00PM .

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

**Town Staff Present:** Nick Bond, Robert Mack, Mart Kask and Karen Bennett.

**Approval of agenda: MSC**

**Approval of minutes: MSC** for October 16, 2006 w/corrections.

**MSC** for October 30, 2006 w/corrections.

**MSC** for November 6, 2006 w/additions and corrections.

**Communications and Announcements:**

**From Commissioners, Town Officials, other government bodies:**

**Beach** Mr. Pruitt has resigned from the Planning Commission for reasons that have nothing to do with the present hearing. If any of you want to read his letter I would be happy to show you the letter of his resignation. We have also received a proposed ordinance on an establishing a single family design requirements for new single family residential construction and we may or may not set a hearing date on that tonight depending on how this all goes. I understand that the sign committee meets and people are progressing with that.

**Nick Bond** we have received what looks like the final piece of a complete application for the Hamilton property for a planned unit development. I have not issued a determination of completion yet. But that one will likely becoming before the Planning Commission just after the first of the year. Possibly into February. Look for that one to be announced here shortly

**From the Public:** There was none.

**Public Hearings:** Continuation of Preliminary Plat and the Variance on the Aviation Heights plat. We are hearing them together because they are intertwined with each other. Now most of you were here two weeks ago so you heard my spiel. We have heard from the Town Planner and we have heard from the applicant. I am going to initially allow both of them to say whatever they wish to say although not to repeat what they have said before because there is some change in the map and also their maybe some questions of them that the commissioners have thought of in the last couple of weeks. Then we will go to other proponents and then we will go to opponents and then we will go to the applicant and

proponent rebuttals and then we will go to the opponents rebuttal of the proponents rebuttals and then the planner comments on testimony and then only direct response that the commissioners might have. Have you all signed the sign up sheet? No all of you have, that is pretty clear. You are going to have to sign this if you want to speak tonight. I may need to swear in some of these people and then I can check that off. All, including town officials and staff that wish to give testimony have to be sworn in. Those that were sworn in last time don't have to be sworn in again. I have a list of who you are and so that does not have to take place. But if you were not here last time or you came and you didn't get sworn in and you now decided you want to possibly speak then you need to get sworn in and we will come to that in a bit. Anyone that thinks that they are going to testify, even if there is just a one percent chance should get themselves sworn at the appropriate moment. Only testimony that is directly relevant to the application is allowed. Any other comment are out of order. We want to hold repetition to a minimum, in other words if somebody gets up and says what you would have said it's fine to get up and say I agree with them and sit down. I don't want to go through the same thing over again. I think that repetition probably, in the long run, does not serve a good purpose for those that are doing the repeating. At each segment when we get to the other proponents and the opponents no one gets to speak twice except for a question directed at them until everyone else in that section has spoken at least once. Get in whatever you want to say the first time. That's the safest thing. All questions wherever they originate from, whoever they are directed towards have to go through the chair. I have to recognize the question and I have to recognize the person who is going to answer the question. They all have to go through the chair. As I said last time I have never put a time limit on people speaking. I have no plans to do so tonight but I do reserve the right to do so if it gets to be long. We should be courteous and should have no direct criticism of persons. We should have no demonstrations of support or opposition to what anybody might say. We just all take it calmly as we can. We will now swear in anyone who is here tonight that was not sworn in last time who thinks that they may want to speak. Is there anyone that fits in that category? Would you please stand. Raise your right hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth, say I do if you so swear or affirm.

Sworn in for testimony where Harrison Christian, Dale Kemp, David Tift, Rick Adams.

**Beach** at this time I am going to allow the Town Planner and the other two members of the town staff to make any statement that they want to make in terms of new material that was not discussed last time and then there may be some questions from the commission and then we will go onto the applicant and allow the applicant to make any statement they want of new material and any questions from the commissioners and then we will go to other proponents.

**Nick Bond** to the Planning Commission I have passed out a few additional documents for your review which are in front of you. One of them is a memo from Mart Kask, which was sent to the Chairman today. It is simply an explanation or response to some of the opponents of the application and just clarifying the issues which are before you and I may have Mart address this memo individually. The second is a memo which is a response, as required by the municipal code, from myself regarding the comments given by the FAA on the Aviator Heights project. I will be going into this again as I go through the minor changes that have been made to my report. And then lastly, is the actual comment from the

FAA, which was returned at the end of last week I which I was unable to get into the packet before it went out. We now have a copy of that for you. I would like to start out by saying that the last meeting the Planning Commission had requested that the applicant make some of the changes which were originally conditions of approval as recommended by the planner in the staff report and as you can from the new drawings which were passed out to you in your packet in which are on display here they have made some changes, primarily, the access road to the development has been moved to the South and lots 1 – 3 have been rearranged slightly, but, there is not increase in the number of lots. There is a slight increase in the amount of area which is being used for proposed hangers and there is an increase in the total number of hangers for the site. I think they have an additional five or six hangers which are now on the map. Additionally, they have submitted a diagram which is here to my right. And this diagram was also requested and it is essentially a comparison between the proposed development and the existing structures which are located on the runway and there approximate location relative to the center line of that runway and the heights of those buildings just for the sake of comparison and feel free to examine that as we go through the night here. I have a report which I have included which is supplemental to the staff report which I have provided and I wanted to explain some specific additional conditions which I have added to that report. At the meeting on the 6<sup>th</sup> of November there was some comment regarding some additional conditions which may be necessary and I felt that three of those conditions were specifically they were warranted and I decided to include them in the report so I have added the three conditions which are numbered 16, 17 and 18 to my staff report. Although the content of the staff report, other than those additional conditions, has not changed and one of them is real simple it's just that we had not designated a location for ganged mailboxes at the site so that they can receive mail delivery without having to have a box at the local post office. So we are simply requiring that they identify and designate a location for the mail box structure and that it shall be installed prior to final approval of plat. Condition number 17 which I have added to the report requires taxi way paving and construction so that the proposed hangers have a paved connection to the run way and additionally the existing gravel taxi way get paved for the entire frontage of the property so that, that is, will then be improved for increased use. The last condition was suggested by Commissioner Schuab and that was the need to designated utilities for the proposed hangers so that in the event that somebody is going to using one of these hangers wanted to install plumbing or electric that those would be available and we are simply requiring that those be designated on the public works or the utility drawings which are submitted and that's electrical, water, sewer and storm water. There are some additional possible conditions which are suggested by the Planning Commission and I wanted to address those now. I am not recommending these conditions but I did want to bring them up in case the Planning Commission did feel that they were warranted. First of all it was suggested that the applicant needed to identify the potential uses of Tract A and Tract B and based on the size and the underlying zoning I think that as those tracts are designated at this point in time there are uses which are allowed for those individual parcels and I don't think there really is any benefit to designated them for a specific use unless it were to be for open space or possibly for storm water management. They have the right to create a lot which they will choose at a later date as that land becomes more viable for development. The second potential condition which was proposed was for the implementation of a restrictive covenant for the proposed aircraft hangers which would essentially limit the use of those hangers to aircraft uses only and I have thought about that one long and hard and I don't recommend the establishment of such a covenant and I feel that it's actually would be more of a negative

condition for the over all development in the short and long term and the reason is that I think that there is probably a fairly limited demand for the hangers at this point in time. The fact that these lots are going to have the potential to actually have aircrafts storages adds value to the property it's an amenity which is unique to this property and I think that the potential for a non aircraft owner buying into this development initially is a probably likely in most of the cases with most of the lots but there will be a few pilots initially. In the long term those people that are not pilots who live at the airport are going to have more of a vested interest in seeing the airport remain because they have value added to their property as a result of there potential use of a hanger in the future and I think that will protect the long term existence of Swanson Field. So I do not recommend such a restrictive covenant I think it will hurt the development overall. Those are the only two potentially conditions that I heard at the meeting. I think that there certainly are other conditions that the Planning Commission may propose and we very well may add additional conditions as we go through the night and we hear additional testimony. At this time that is all that I am recommending. I have a fresh copy of the staff report included in your packet which has the conditions that I recommend and other than that unchanged. I'd like to turn it over, I think the applicant has several additions, several bits of additional information which they want to submit to you and their going to better able to explain the changes in the development and actually I did not touch on the FAA letter yet so let me do that quickly. The Eatonville Municipal Code requires that an applicant when they propose a development at the airport they have to submit a form, and I don't recall the number of the top of my head, but they submit the form to the FAA and get a comment back from the FAA on the development. The FAA was a little bit slow in getting that comment back to us but we did receive it at the end of the week, last week. The information which was submitted to the FAA was submitted in such a way that the FAA had actually visited the site and told the applicant to submitted two specific parcels to the FAA for comment. Those are the two parcels which were, one of is on the first row of development, parcel 5 and the other one was on the rear road of the development, I don't know what parcel number was. Essentially they said that they only really need to review the creation of a lot for one of the individual parcels from each row and they could determine the entire row from reviewing that one parcel. I think that the applicant can better explain that situation as they had more direct contact with FAA an I have. In short the FAA did approve the building of a home on lot number 5 and does not approve any additional lots at this time and essentially our code requires that the time of building permit the applicant for a building permit submit for comment their building proposal to the FAA for additional comment and then the FAA may recommend conditions be attached to the construction, such as light on the top of a roof or painting of a building of a certain color to better identify it to pilots. It appears that the FAA is willing to sign off on the development and I have written a letter which I have submitted to the Planning Commission which is a response to the comments on the Aviator Heights project and I'm going to read that into the record.

It is part of my review under the code Section 1804185 Section E1H. I am required to review and evaluate the comments from the FAA and as a result may recommend the conditioning the proposal based on such comments. The FAA provided comments and letters dated from November 14, 2006, which I have reviewed, and upon which I make the following evaluation and recommendations. The FAA letter of November 14, 2006 approves the construction of the proposed home on lot 5 at the elevation disclosed in the submittal. Lot 5 is the highest point in the proposed sub-division relative to FAA part 77.

Because the FAA has determined that the construction of a house with an elevation shown on the submittal will not be a hazard to aviation. I have concluded that the construction of homes of the same or smaller high and dimensions on the remaining lots will also pose no hazard. The FAA states that it requires additional submittals for the hangers shown in the proposed design. However, the FAA provides no basis for this request and identifies no hazard posed by the proposed hangers. Hangers are allowed use in the zone and are shown as acceptable uses in the FAA airport design regulations. The FAA then states that it has concerns about the project based on how much from the Washington State Department of Transportation Aviation Division and the Aircraft Owners Pilots Association. But it does not identify any specific concern or evidentiary basis for such a concern. Because no concern is identified and no concern is presented to support any concern I have determined that the letter provides an insufficient basis for conditioning the project. Thus I do not recommend any project conditions based on the FAA letter. they did not propose any specific condition in their letter for the construction on Lot 5. The FAA concludes it' letter by recommending that the proposed development conform with the FAA Advisory Circular 5300-13 whose purpose is airport design. The circular is available on-line and is a 318 pdf document. It contains no regulations pertaining to residential development or other developments surrounding an airport. The only plausible relevant portions of AC5300-13 are the regulations and diagrams pertaining to the runway protection zone, the runway object free area and hangers. The criteria contained in AC5300-13 are consistent with the criteria set forth in the Code Section 1804.185 and there is nothing in the AC5300-13 that if applied the proposed project would preclude the development. Finally, in these proceedings the FAA is a commenting agency and does not have the authority to grant or deny the requested local government permit. Based on the letter I have determined that FAA does not oppose the development but recommends approving the development so long as it complies with the FAA runway protection zone and object free area regulations. I have also determined that the FAA letter does not establish that if implemented the proposed development will have any probable substantial adverse impact on public health safety and the safety of flying aircraft. Based on this analysis I do not recommend any further conditions on the proposed project other than those already set forth in my report. I think the applicant going to touch quite a bit more on the letter and the process that they went through with FAA and I would like to turn it over to them.

**Lind** Mr. Bond and I have talked about moving that road to the South and when you do that when you bring it down on the elevation unless you pick up the property to the south on it because of the slope on it you are going to be moving that road 30 feet or more to the North on it . You are not going to be able to keep it there unless you build a 30 foot retaining wall. I would like to have some comments on that. The taxi way and paving, it seems to me that it would make some sense that would get done at the same time as the paving to the houses because this is a unified one so I would like to hear some comments on that. I would like to hear Mr. Mack respond to Mr. Bonds memo to the Planning Commission if he is in agreement or has any problem with that on it. Those are the three things that I see at this time and some time I would like to hear.

**Beach** aside from the requested variance is this project in both compliance with the adopted standards of the town.

**Bond** that is my finding that is listed in the staff report. Yes.

**Beach** FAA part 77 they are guidelines, they are not regulations? Regulations in the sense of being enforceable?

**Bond** I think that is a question that is better answered by . . .

**Beach** I was going to get to them. That's all that I had. Mr. Kast would you go through the statement that we distributed tonight that you wrote.

**Mart Kast** Mr. Chairman the statement that you referred to was prepared in response to your question raised earlier in e-mail memorandum. I have reviewed Nick's findings, conclusions and recommendations on the preliminary plat application for Aviator Heights and concluded that they are complete and they are in conformance with the town ordinances and procedures. I believe that the Planning Commission, based on that, should approve the preliminary plat application before you. The opponents of the application seems to confuse the issue. On one hand they talk about the application as it is before the Planning Commission but at the same time they raise the issue that the comprehensive plan and development regulations are not in sync. Mr. VanCleve in his presentation has presented these issues before the hearings Central Puget Sound Growth Management Hearings Board. Initially the complain was the comprehensive plan was out of compliance with the growth management act. The hearings board reviewed that complaint and determined that it was not the case. It ruled in favor the municipality stating that the comprehensive plan was in conformance with the growth management act. Then the second complaint that Mr. Pruitt and Mr. VanCleve brought before the hearings board was that the comprehensive plan and the development regulations are not in sync or not in conformance or yet that the development regulations do not implement the policies and goals and policies contained in the comprehensive plan. That issue is before the hearings board. The hearings board could, very well, rule that that is the case and if that happens then the town is given a certain amount of time to rectify the inconsistency. The rectification or the fix to that problem would be to amend the comprehensive plan or amend the development regulations or make some amendments to both documents so that they are in full conformance. I should also state that the sentence or the policy that is out of compliance or out of sync between the comprehensive plan and development regulation was drafted by Mr. Shambough from the Washington State Department of Transportation and was put into the comprehensive plan at the request of the State Department of Transportation. So the ambiguity enters the process from that source. The hearings board also could deny the complaint saying that they are out of compliance and may rule that indeed they are in compliance. Or the hearings board that the don't take a position but do grant the town their request. Their request is to give down some time and go back and fix the problem by making the these changes to either to the comprehensive plan development regulations or both. So indeed they are in conformance or they are in sync. So that is another option. But one should not loose sight of the fact that the applicant filed their application at the time when the comprehensive plan had been certified and development regulations had been certified and were in full effect. That means that the application was vested under the development regulations as they existed in August, I believe, was the filing date and as they exist today. The hearings board has not ruled on the validity of the development regulations. So today we have in front of us a application on one hand and on the other hand is the development regulations as they are currently on the books and they are valid. The plat application needs to be evaluated on the basis of the development regulations as they existed in August and as they exist today.

Because the application was vested at the time those development regulations were in effect. The opponents have raised the concerns that we should hold off and not take action and delay action and so forth. The delaying action will not change anything. Again, I come back to the earlier point that the application was filed at the time the development regulations were in place and those regulations will have to be considered when evaluating the application. In the event that the growth management hearings board tells us to go back and fix something and we will do and create a revised development regulations those revised development regulations will not be applied when you review and evaluate and make a decision on this plat application. That pretty much concludes my remark but there is also a sort of a valedictorian threat in the letter that was written to Mr. Beach from the Puget Sound Regional Council suggesting that if we don't do all these things that they have outlined in the letter that our Corridor Grant may be in jeopardy. I find that a far stretch and the two are not related in anyway that I can see and Mr. Mack had a conversation later today or today my conversation with the Puget Sound Regional Council staff took place on Friday. Mr. Mack talked to them today and may have something to say about that but I would say that ignore the threat and proceed on the bases of facts that are before you relating to the plat. That's all of my presentation. I would be happy to answer any questions.

**Beach** let me summarize what I think you said and then you can agree and then I will ask Mr. Mack whether he's in agreement with assuming you agree with what I'm about to say. That the issue here tonight and in this matter, generally, is the application for the plat map and the variance and whatever conditions that we choose to attach to that. It is not about the development regulations themselves. Whether the development regulations are good, bad or indifferent is not relevant to this proceedings on this application. Does that summarize?

**Kast** it sure does.

**Beach** Mr. Mack, do you agree with that summary?

**Mack** Mr. Chairman, members of the commission I agree with the answer that the Chair question. I have a slightly different, I don't disagree with the previous speakers, I have a slightly different outlook on the letters that were received and what they meant and I don't know if you want me to go into that now or later.

**Beach** if it's applicable to this particular issue, but I don't want get into other things at this point.

**Mack** if you want me to just comment I can comment later on the letter from the Puget Sound Region Commission and the FAA. As with regards to what you have to apply to consider this preliminary plat proposal I agree essentially with Mr. Kast and I think that your task has been made very difficult by almost too much information much of which is interesting, much of it is relevant to aviation issues, but some of which is not relevant to determination at this point on the preliminary plat. The FAA regulations which, I know, Mr. Lind asked if you'd been given copies of part 77. I don't know if you receive copies of that.

**Lind** no, and what I had in mind was the specific language where the should is that aloud us to change something on it and a comment on that. But, again, I like for you guys to make a

note of that and after we have all the public testimony we get back into those issues on it. Because, I think, after we have public testimony we might have some more stuff on that and it might be more.

**Mack** I'd like to get back to that but before I finish, at this point, I'd say I did get a chance to review, again, the FAA regulations. I've looked, again, at the FAA letter and the letter it's self, in paragraph 3, really states what the regulations require, which is it requires notice to the administrator of specified construction activities. Although the letter ends by saying we have serious concerns about the proposed development it keeps making references to the regulation. The regulation deals with proposed construction and when you get the regulation, and at the end of the evening or whenever you want me to comment, I'll comment on the regulation. The regulation refers to, and the review is, of construction activities. If you were in fact sitting here hearing a building permit application, or something similar, that is what the FAA looks at. Although they have commented on this plat the regulations do not cover anywhere that I can see planned unit development proposals, plat proposals, comprehensive plans, development regulations. They are surely free as a federal agency to comment on them, but the scope of what they do and what they comment on is proposed construction. They did for reasons, frankly, I had questions about, but the town planner explained dealt with proposed construction on one of these lots which apparently is the lot which will have the structure of the highest elevation. And they did comment on that. And then the planner has said that it would be the highest building allowed and since that met with FAA approval that other structure would meet with approval. But I want to emphasize their regulation really deals with construction and notice for construction. And not with plat approvals. And of course a condition of the plat approval could be that notice must be given to the FAA for particular buildings for comments.

**Lind** and again I would like for Mr. Mack, Mr. Kast and Mr. Bond and the proponents to kinda make note of what I say here and after we have public testimony circle back and deal with what I'm going to speak with. One, I would like to know if the Puget Sound Regional Council has any legal authority to write what they write and they also suggest that we put this off for a long time and that seems to me to be in conflict with state laws that limit municipalities in their time limit to do that and I don't think that they can suspend those but I would like to hear those comments after we've had public testimony, etc.

**Mack** I did speak to the writer of the letter, which I think that you have. This afternoon I am sending him a follow up letter but I wanted to give him a notice of that and so we did clarify some things in the letter.

**Lind** was I clear in what I had in mind.

**Mack** I think so.

**Lind** I'm thinking the 120 day limit, I believe.

**Mack** I think it is shorter than that. And I did mention that to them. Whether, in fact, that they want it on the record that any delay would be caused by the Puget Sound Regional Council making some kind of demand on the town. And that apparently is not what they want. We will talk about that later.

**Beach** does the applicant want to make any comments at this point about your new map and so on?

**Kevin Foley**, Baseline Engineering

Just a couple of quick things. Just kind of a follow up on what Mr. Bond said. First of all I would like to indicate on this particular map exhibit, and this one as well there is a surveyors stamp on it. For some reason it didn't get through the cyber space. And so I just wanted to show you that there is a stamp on both of those. I think I heard a question earlier, I think it was Commission Lind in regards to the right of way. We have moved the road further south on Weyerhauser Road to do a couple of things, one of which is to ostensibly get ourselves in a position to provide as safe as a condition as possible for the residential lots. Also, Commission Lind mentioned something to the effect in terms of the right of way. The right of way is proposed to be centered on the property line. That will require us to negotiate with the a joiner 25 feet of dedication for his part of the road. Now because there are grade issues, as you have pointed out, there are two ways to accommodate that. Either through a retaining wall or through a slope easement. So in addition to the 25 foot requested right-of-way dedication from the a joiner we also be requesting an appropriate slope easement to stabilize that bank. Also, as Mr. Bond indicated we know that the density is the same. We have moved the road down a little bit. We have transitioned into the future road dedication which is still indicated on our map. Tract C it appears (mention was made) that we have added additional hangers there. And that is correct but that was simply a matter of just relooking at our Tract A, Tract B and Tract C dimensions. The area devoted to residential lots is basically the same. We wanted to take a look given the opportunity to move the road down a little bit. Obviously, we have got some lot lines to adjust. We will also adjust those tracts a little bit and that gave a little bit of elongated space to that which allowed us some additional space for hangers. On our previous utility map, particularly for sanitary sewer, I reexamined that when there was a question in regards to utility and we had in fact, on that map, provided a utility stub to Tract C so it will be fully serviced. Also, I think it's on this map here, just to draw your attention.

**Bond** spoke away from microphone.

**Foley** that will be reflected on the final plat so that Plat C will forever be able to provide utilities to those owners of the hangers. The other comment that I have, and just to wrap it up, it this exhibit here. Mr. Chairman and members of the commission this is an important exhibit. This exhibit is a survey map of the rest of the runway. Everything that is on the runway is shown on this map. I draw your attention to our proposed hangers. Now, given the fact that we were a little bit unclear what the Fire Marshall wanted in terms of a fire access lane I assumed he wanted one. We learned later that he did not, necessarily, need that so we backed the hangers up another 15 feet so we now have 40 feet of maneuvering frontage on our property within Tract C prior to entering the runway area. We have also indicated, just again this needs to be coordinated with the airport manager, but a couple of access cuts directly to the runway area. And probably, most importantly once you get a change to look at this particular exhibit is the hangers, themselves, dimensionally as you move down through the rest of the runway we are at the same setback or further back than most other hangers that presently exist along the runway. We had an opportunity to respond to some of the commissions comments that we heard November 6<sup>th</sup> we tried to get

most of our maps changed accordingly. These are the two that we thought were most important. These are the ones that we took some time to work with and follow up on some that we felt were some great suggestions by the commission members. At this point that would wrap up what I had to say and I would be happy to answer any questions.

**Lind** Mr. Foely, the map to your right shows existing situations and proposed situations on it and I think what it demonstrates is that the imaginary surface of 2006-6 have are not further violated from what existing structures are. Is that correct?

**Foley** that is correct Commissioner Lind. I am glad you mentioned that. Actually as we look at one of the three safety zones that we have in the ordinance the zone line basically only bisects lot one. That 60 degree conical safety zone line would impact approximately a quarter to a half of lot one leaving sufficient space for a resident to be constructed. No other lot would be impacted by either the runway zone, the approach zone or that inner turning zone.

**Aaron Laing** thank you Mr. Chairman. On behalf of the applicant we just wanted to submit some additional information to the record. There are basically two exhibits that we have here. And if you don't mind I will hand them up to you. And then I have copies. The first exhibit that I handed to you, the thicker stack, you can see that the top sheet there is a copy of a letter dated October 12, 2006 from my colleague Mr. Tift to the Washington State Department of Transportations Aviation Division and you can see that it's a freedom of information – **Beach** – I think you better describe what you just gave me. **Laing** – let me do my best to describe this. On behalf of the applicant we submitted on September 28 of this year. Pardon me, in response to the WAS DOTS letter of September 28 of this year we submitted a freedom of information act request to the department and specifically because in their September 28<sup>th</sup> letter the Washington State Department of Transportation stated that they felt that the proposed project would endanger the lives of people on the ground and in the air. And we wanted to know upon what evidence they made that determination. So we submitted a request to review specifically that evidence. Last week we received on November 16<sup>th</sup> WAS DOTS file in response to that request which we went through several times and were unable to identify so much as a single identified hazard in any of the materials. And I will leave it to the commission to review those materials. These materials have been provided to Mr. Bond, Mr. Kast and Mr. Mack to review. What you will find is that the materials in whole just show various iterations of the proposed regulations and some WAS DOT notes and some correspondence going back and forth. This is significant because, to the extent the commission would rely upon the comments from WAS DOT that there are hazards posed by this it's a conclusory statement without any evidentiary support and there fore does not provide a permissible basis under Washington law to condition or to deny the proposed project or variance. With regard to the second exhibit, which I have provided, you will see in the letter that, I believe, it's the November 14<sup>th</sup> letter that the Federal Aviation submitted in response to the request for comments on the project. At the end of the letter the FAA recommends that the proposed project be conditioned and designed in conformance with FAA Circular 530013. We went and review circular 530013 and the manifest purpose of the circular as it states on the title page and as it states under the title purpose on the opening page of the circular is airport design. And this is to be used as it states in the application section on the third page, Application Use And The Design of Civil Airports. This is not a circular or a set of guidelines for use in guiding residential

development or even development around a airport. However, in trying to do our best to see what guidance the FAA is hoping to provide for us we did review the comments in the 320 pages that comprise this circular for anything that seemed to be related in anyway what so ever to this project. We found that there were some criteria that was related to the runway protection zone, the runway object free area and hangers. And so to streamline the process we pulled out those pages and copied them and provided them both to the town planner, Mr. Bond as well as to the commissioners for your review. Thank you.

**Beach** Well thank you for these. Of course, obviously, this is going to take us a while. We will have to rely upon our staff to digest this and that will probably not happen tonight. I might just read the one part of this just because the chapter titles are kinda of revealing. And then you have pulled particular things. I noticed that you have got some things from runway design, for example, in here. I think the chapter titles do tend to bare out what you suggest that it's about airport design, not about things around the airport. Chapter One is regulatory requirements and definitions of terms. Chapter Two is airport geometry. Chapter Three is runway design. Chapter Four is taxiway and taxi lane design. Chapter Five is surface gradient and line of sight. Chapter Six is site requirements for (couldn't understand)\_\_\_\_\_ I hope I am pronouncing that right, and ATC facilities. Chapter Seven is runway and taxiway bridges. Chapter Eight is the effects and treatment of jet blast. Which is undoubtedly what we need at the Eatonville Airport. And the rest of it is a series of appendices that go with these chapters. We will have Mr. Mack and Mr. Bond and Mr. Kast take a look at these and see if they are as you represent them to be.

**Lind** and again he can hold this comment til after public comment. But as you went through the FAA stuff did you find that it was advisory should instead of shall generally? Is that the characterization?

**Laing** what I focused on, primarily, Commissioner Lind was what was the substance of the criteria themselves. The feet, the 125 foot from the center line, these sort of things, to see whether or not there was a the criteria there were basically the same as the criteria that we were looking at this evening and a couple of weeks ago. My understanding, and this may not be a direct response to that question but I would second Mr. Mack's comments about the nature of the regulations here which they seem to me to go toward more construction issues and not lay out issues.

**Beach** the next will be proponents. These would be people who support the application as it has been presented to us. Is there anyone that wishes to speak in favor of this application.

***Speaker did not state name or address***

Well I don't know a lot about developments but I have lived in Eatonville for the last 15 years and all my kids were born here. My oldest is 25 so I have quite a history with Eatonville. I live down by the Michelle Tillicum Warehouse. My house has the big field in front that currently has a lot of water running through it. I think it's a beautiful development. I think it's going to be one of the nicest development we have had here. As Mart Kast said in his letter to Phil, which I have a copy of, he said it complies with all the ordinance and operating procedures. I would like to see it go forward. I know someone right now that would like to buy a hanger or one of the lots to put a hanger on. That is all I have to say.

**Beach** o.k. then we will go to the opponents of the application. I am going to exercise my prerogatives in this area since Mr. VanCleve has generated a lot of correspondence for us to read I will call on him first.

**Steve VanCleve** 206 Orchard Avenue South, Eatonville, WA

One thing that you talked about tonight was that we should keep our comments relative to this. But since Mr. Kast brought up some issues I will touch that real briefly. There is no dispute as a petitioner for review of Ordinance 2006-6 which Mr. Pruitt and I did do. It's absolutely clear, unmistakable, that the comprehensive plan and 2006-6 are still valid. The attorneys have all said that, the hearings board said that and we completely agree, it is the valid ordinance that exist before you tonight. I don't know what prompted the letter because there has been no correspondence from us or public statements since this is the first chance to do so. But that is anything but the case. I talked to Mr. Pruitt today and he says he is in full agreement that that is the case. I don't know what drove that issue I problem is not with the comprehensive plan either. We have accepted the comprehensive plan and have been on record saying that the comprehensive plan is indeed correct and we dealt with the ordinance. There is nothing we have done to ask for a delay that is not the case. So I don't know where that, but I have not done anything in any correspondence or public statements to ask for a delay either. Neither has Mr. Pruitt. Regarding the Puget Sound Regional Council. It was eluted to that this was a threat from the opponents and I did not even look at the, I read the Puget Sound Regional Council memo's, obviously, but I didn't preserve them as a threat either. I talked about grant requirements and a whole bunch of detail of that which you guys can get into later but then again we don't propose that as a threat either. To address Mr. Kast's comments I really, it's not an issue. My issue here with this is not that I'm opposed to development, I certainly not one of those anti-growth people that say development should not happen. I have sat on the Planning Commission, chaired the Planning Commission in previous years. Growth is coming, growth is going to happen and we know perfectly well that this is the case and managing a well is the whole case and that is why we are all here tonight. My only disagreement with this development in to that it exists or that they are doing it I have actually been on public record at this body saying that I was a proponent of developing this airport. I think it would be a great thing to have. The additional houses with the airplanes, additional growth to our airport. Maybe we could get a fuel depot someday. There are a lot of great things that could happen when you do an airport development. What the issue here is not so much about the development itself, it's about the nature in which it is being done. This is part of the airport district. Carefully review the zoning your there to encourage aviation uses. In the case of this, really, it's just a housing development with a bunch of hangers in front to make it look good. It's not really a air park type development. Now I know our ordinance 2006-6 allows any kind of residential, it doesn't limit this, but I think single family is what it says, but it does not limit that. But if you go to Washington State Aviation Planning Guidelines you will find that regular residential is a prohibited use. And so that is one thing that you could consider as a condition to make sure that is aviation residential and comply with those Washington State guidelines for incompatible land use. Now I could never understand why this couldn't be an aviation development. The road there that is there could be a taxiway. The road down the middle could be a taxi way and you could put hangers on the lots. You could get rid of having the whole expense of utilities and all that stuff for putting hangers in front it. You know they have done a great job with smoothing the slope out and some of the gravel work

looks great so I don't see that got that slope so shallow now that it really could work as a aviation development which completely eliminate the incompatible land use issue. So I want you to consider that as a condition because this could go on and go forward but it could be better. And I think it could be more profitable for the developer because aviation lots get a premium. If you have access to a runway off a lot, the latest study I was talking to was the Living With Your Plane magazine people a week ago Friday and they said in our area it's about a \$30,000 premium if you have access to the runway. So it seems a little ridiculous that with just a few mods this thing could work as an aviation development. The FAA report, I read that, and you guys have talked about that a little bit so I won't go into that. They do have serious concerns about the development. And one thing that I would like to point out about airports, airports are more than just the runway. Airports have slopes and FAR77 conditions that so when you consider airport design it would have to extend into this development that would be part of airport design. It's not just the 200 feet that is the easement for this airport, it would be much more significant than that. I'm a little concerned, I had a conversation with Nick Bond a few weeks ago and he talked about the airport and I said if complying with the FAR77 height restrictions is important and that is the safety standard that is accepted nationwide there are four different versions off FAR77 depending on the size of your airport. Obviously something like SeaTac or Denver International were I work out of are completely different than what a little utility airport is like this. So this is the lowest, least restrictive type of condition under FAR77 height restrictions. But when Nick said something that was very interesting, he said "we would rather close the airport than comply with FAR 77". And I thought, gez Nick that's not a good thing. You should ask him to put it in writing but he wouldn't put that in writing. He is advocating violating a federal standard and it is a regulation, by the way, it is absolutely a regulation FAR77 is.

**Beach** what do you mean by that term? Regulation.

**VanCleve** it is a federal aviation regulation.

**Beach** but what does that mean? Does that mean that it is a requirement that absolutely has to be done. Or it is there wish that be done.

**VanCleve** FAR77, first thing, is that you have to report to the FAA what you are going to do. That has been done, it has to do with slopes. The federal law that determines the slope and it is much lower than what whether you penetrate it or not. The threshold for reporting is completely different and much lower than the penetration of the airspace.

**Beach** aren't we now getting into also an argument about the development regulations themselves?

**VanCleve** no, because what I'm saying us FAR77 is an acceptable safety standard and it would be well amongst your purgative as a planning commission to require that FAR77 regulation is met as a safety requirement of the development. It is a regulation.

**Beach** I think that I will ask council whether is consistent with the development standards that are adopted by the town. That it would require us to adhere to the

**VanCleve** no, you are not require to. 2006-6 is less stringent than FAR77. That has been establishes.

**Beach** Then you are arguing about that standard not about this development.

**VanCleve** well you could apply the Federal Standards to this development if you choose, as a commission. That's my point.

**Beach** where in the ordinance does it say we can do that?

**VanCleve** actually, if you go to Section K at the end of the ordinance it specifically says that when there is a conflict between regulations that the most stringent shall prevail. So please review Section K at the end because it actually points out that the most stringent regulation shall prevail.

**Beach** what the source of these regulations. I could presumably I could find a regulation that was more stringent than FAR77 and say that they ought to prevail.

**VanCleve** no but it also says that they apply to this property and this is an airport so the FAR77 regulation here are Federal regulations and here are Eatonville regulations. The height standards topographically will be this high for the Federal ours are this high. So we have a less stringent regulation under our ordinance than what it is. But if you go to Section K it clearly points out that the most stringent shall prevail.

**Beach** o.k. we will let council deal with that.

**VanCleve** it kind of concerns me that when Nick said they would rather close the airport than comply with FAR77 and I would also

**Beach** we will allow Nick to also respond to that.

**VanCleve** he knows he said that. And I thought that was inappropriate and I think in light of his comments and some of the things he's said that some of his testimony should be considered prejudicial in favor of the development rather than a neutral party as I would expect a town employee in his position to be. He has advocated for the development significantly and I don't think that he has been impartial. Specifically I want to deal with the variance issues. Now the variance moves these lots. They are not in the same position, all of them are not in the same position as they were prior to the variance. The variance, very specifically, says that you have to file then with the FAA and the FAA should be notified when, how the lots have changed where they are and also the hangers where not there in the original time. And there has not been a report back from the FAA on the hangers and they are indeed a construction issue. So the hangers, I don't believe, you have complete information from the FAA to make a decision. I would like to see the FAA to make a final determination. Make sure that all what does become in violation of FAR77 that you are clearly aware of it. But this is to sketchy just doing lot 5 doesn't tell them a lot and you haven't got anything back on variance issues yet. And you variance procedures very much clearly says that you need that. The variance also says that you have to demonstrate a hardship. And I don't see where a hardship comes of this to add three more lots is not a

hardship. Clearly review 2006-6 regarding that requirement as well. Some of these we have Mr. McTee, Mr. Collalman I put some of this in writing for you so that you would have that reference. Also, FAR77 has another factor that has not even been considered here yet. Roads are a FAR77 issue. When you have a road there has to be a high restriction so you don't put a road at the end of the runway right where an airplane can come through and land. And that issue has not even been acknowledged or sent to the FAA or nobody talking about this road and I believe this road right here will be a significant FAR77 regulation violation. No what about liability. Liability is one of those things that you can through up but I would think that if I was a buyer for one of these lots and it is incumbent on me then to file the 7460-1 and then I find out I have FAR77 penetration after the fact. I think the developer has the right to make sure that anyone that who buys one of these lots clearly knows whether he is in violation of the Federal Regulations or not. And if you let that happen at the time of building permit jez they have sold a lot and now you come up violating the Federal Regulations. Hell, that might not be a good thing to have. So I think the buyer should know. The Washington DOT, I'm sure, based that their hazard on FAR77 penetration they do believe that there is going to be FAR77 penetration in this. Although, we don't have the benefit of the FAA's report. So anyway I think that's all I've got to say about it. Thank you for your time. I'm hoping that you will really, really research and consider this thoroughly.

**Beach** I do have a question that came from actually reading the material that you and Cassalman and McTee gave to us. It seems to me, and you can tell me if I'm correct or not, that the implication of what you are saying is that what they ought to do is remove the rest of the material that they have there to bring the whole plat down to the level of the runway. Have I misinterpreted what you have said?

**VanCleve** the level should be established such that that when anyone builds a house, and hopefully if we could get hangers on it as well, that there would be no penetration of the 77 air space. Penetration of FAR77 air space is cumulative the more you do it the more hazard. And you will find that in the FAA reports all the time.

**Beach** what about as a pilot what about the slope given the existing lay of the land out there. What about the slope getting from the runway up to those other lots?

**VanCleve** I can use an example and one that you may want to consider looking at is Frontier Air Park which is just east of Arlington. Frontier Air Park is a residential housing airport developed for that purpose it has a runway but it's on quite a bit of rolling property. So they leveled the runway but all the houses are higher and lower and they are fairly well spaced out so they complied with the FAR77 requirements. But people taxi up and down and through those homes and they park their cars and they taxi their airplane and they do it all simultaneously. And Frontier Air Park I have one of my good friends lives on Frontier Air Park it's a beautiful air park, really upscale lots with the housing and they really did a good nice job.

**Beach** they have grades that are comparable to the grades.

**VanCleve** if fact, higher and lower tha this one. But the highers are so far out that there its a penetration of FAR77 airspace.

**Beach** do any other commissioners have questions.

**Lind** I have a number of questions for VanCleve and I think I'll start where he's at and head backwards here. Do you know Mr. VanCleve if Frontier Air Park is one of the 28 airports that is accepted into the Washington State system or is it like Shady Acres?

**VanCleve** Actually I can tell you I don't have that list in front of me to tell you what it is. It is a public use airport so I would believe it would be but also is Shady Acres is a public use airport as well.

**Lind** but there is a significant difference between Shady Acres and Eatonville is there not? Shady Acres is a private airport it can't make application for DOT funds.

**VanCleve** it is a privately owned public use airport as is Crest Air Park in Kent.

**Lind** o.k. As I listen to you I tried to figure out what it is what you would want us to look at. Like, if you had your way, try to turn around your objections into a you design it.

**VanCleve** o.k. Boy, that's what I'd love. Geez that's great. You know this is a beautiful picture back here, it really is, I guess I will use this map to describe what I want to say. Basically, I would like this to be an air park not a non aviation residential housing development. The lots would pretty much work for that there is not a lot of changes that would be made. The slope would be adjusted, you would do the roads differently so they would be combination taxi ways and access road. On the Eatonville Airport now we have several cases where Brendan and I and others have hangers and homes where that is a private road that is both a private road and combination taxi way. There are covenants for height restrictions so that the airplanes can pass. But if you converted that to a private road/taxi way combination and you would have to work out those details to make that work and put the houses where you could have a hanger at the house. I know a lot of people who says boy if they let us have hangers in there I would buy that thing in a heart beat. And I really think that they would sell it for more money and I think they would fill faster if it was simply made airport compatible. Some of the areas were there may be FAR77 penetration they could be mitigated by some, maybe, by a one story house or maybe put a hanger on the backside or some ways like that. Or we could mitigate any potential FAR77's. I don't really have a problem with FAA does things interesting with FAR77. If they have a little bit of a penetration where a corner of a building penetrates it but the majority of the building is in it. The FAA will sometimes conditionally say o.k. we know it is a hazard but we will mitigate that hazard by some lights or painting it or something like that. So small marginal penetration of FAR77 and that is part of the whole 7460-1 filing process is to identify whether there large or non-penetrating or just little marginal ones that can be mitigated. And actually the Feds are pretty good about mitigating those little penetrations. And I think that we would probably have a few of those but those could be mitigated and some adjusting could be made so basically take the same plat and turn it into a air park. Make sure that it doesn't stick up to high and we would be good to go and we'd have something that Lisa, who talked about how nice it looks, and it does look nice we could have something, I don't think you have much opposition here tonight if this was an air park development rather than a non-aviation residential housing with some hangers in the front. I think all the opposition would melt.

**Lind** Mr. VanCleve did you bring with you tonight an official document from the Washington State Department of Transportation, AOPA or any other organization showing what a recommended air park design is that could be entered into the record.

**VanCleve** No I did not. That wasn't relevant at the time. If that would be something you

**Lind** I think that what a recommended air park is as much in the eyes of the beholder.

**VanCleve** I think there is a couple of criteria though that are absolute in that respect. One, is that it has to have access to the runway to be air park. If you can't get to the runway it can't be an air park. I think if you dealt with that issue you would solve a lot of problems.

**Lind** do you have a document that you can enter into the record showing that?

**VanCleve** I don't know what you can say about a document that says – it's kinda of intuitively obvious that if you can't get to a runway from a lot it's not part of a air park. I mean

**Lind** second question is your not paying attention to 2006-6. Your reverting into FAR77 in all cases, correct?

**VanCleve** I am actually referring to 2006-6 especially paragraph K at the end where it says the most stringent regulation will apply.

**Lind** well I think that we will have testimony from legal council here later on that particular issue.

**VanCleve** but you have the option of doing that. Now even if you didn't do fully part 77 and you made it an air park I still think that it would be a whole lot better. To just make it a runway access, make it an air park. But I think the commission needs to know where there are penetrations of the FAR77 air space.

**Lind** next question. If the roads, as they are shown now, were turned into private roads/taxi ways but the hangers were left down at the bottom and if someone wanted to put hangers up above would you find that an acceptable solution.

**VanCleve** hangers above would be a very acceptable.

**Lind** If they wanted to put hangers above but we would still leave the hangers below and instead of having it to be public roads it would be private roads/taxi ways on it and if somebody wanted to go and put a hanger on the existing 27 lots up there they could do that. Would that make it acceptable to you?

**VanCleve** the hangers up above would be acceptable and it sounds like they are working on moving them back to make them more compliant with height restrictions. And I have no problem with hangers down below as long as there is not a height restriction issue or it's a marginal one that can be mitigated.

**Lind** thank you.

**Beach** any other

**Valentine** yes, maybe you could explain to me a little bit more about accumulative invasion of air space.

**VanCleve** you stick something up in the air, a bunch of build blocks you could call it, and if they are inside a critical air space the more blocks you stick up in an air space or the more points of contact you stick up in an air space that are into that critical air space that is defined by FAR77 the more risks. So, simply, it's the more points. The more obstacles and the more chances of hitting it.

**Valentine** is there a guideline of percentages, 10, 20.

**VanCleve** there is no percentage guideline because they recommend no penetration or sometime they will mitigate marginal ones. If anyone has any questions for me, unfortunately, I have to fly very, very early in the morning, Chicago and L.A. so I can't stay that much longer.

**Beach** we will try and bear that in mind. Thank you for telling us.

**Charles McTee**, 408 Ridge Road, Eatonville, WA

Mr. Lind asked Mr. VanCleve if he brought a plan of a air park. I would just like to say that a few years ago when I was on the Planning Commission we made an air park at Swanson Field. We zoned the land that way. We made a place for taxi ways and laid it all out that way. And that's what we did. I owned eight acres out at the airport and I developed that land with taxi ways. Some of the people that live there, like Mr. Schaub, don't have an airplane but if they wanted one they could taxi it up to the airport. And on that eight acres that I developed there is five houses there now worth close to half a million dollars a piece and there is room several more and they will all have access to the runway just like the Planning Commission visioned it eight to ten years ago. That was before it was in the town and the town accepted it. It was stilled zones in half acres lots. And it should remain that way. There shouldn't be any variance on that.

**Schaub** I am looking at the map and I see some of the lots that are developed in Aviator Heights as being large enough to accommodate a home and a hanger. Some of them do not. But there are going to be many areas down below to accommodate hangers for some of the proposed houses up above that wouldn't have enough room on their lot. They might have a lot towards the cul-de-sac or I'm seeing that when you get down below a 100 feet wide it becomes a little more difficult to put a access of 40 feet. You almost need 40 feet to bring an airplane in off the taxi way into your property.

**McTee** that is why they where zoned in half acre lots. Now they are trying to change it to, some of them are only going to be 12,000 sq. feet, which is a good size lot but it's not big enough for a house and a hanger. That is not in the zoning code. You are going to have to

change that or give them a variance or do something if you are going to let them put those smaller lots in there.

**Beach** that's what the variance is about.

**McTee** well then the variance should be denied.

**Lind** I would note that we don't have anything in the record showing what Mr. McTee has alluded to here on a layout on the whole airport.

**Beach** we don't have a document that shows what it is that you were describing. (McTee speaks away from microphone). We have the zoning, yes but you were describing taxi ways and so on that were all laid out, at least that was my understanding. (McTee speaks away from microphone).

**Joseph Price**, not a resident of Eatonville.

This particular development, however, goes far, far beyond just Eatonville. This is one of the things I'd like to bring to the record. I personally I happen to live on Shady Acres Air Park I am very familiar with other air parks and I can tell you several things about that came up related to that. One of the things that I see in this is that this is an aerospace zone. Everybody knows that. This is a housing development, this is not an aerospace development. With half acre lots it can be made for that, which was previously mentioned. One of the things that is critical to a development like this is gated access. This is one of the things that I will bring up. One of the problems that we have at Shady Acres Air Park is because of the way that it was laid out. I have lived there for 12 years. So I am very familiar with it. I am very familiar with every airport in Pierce County and most of the ones in the state. One of the problems with this being high is, basically, safety of flight. I won't go into the details and such. If this was developed as an air park I would consider buying a lot. But not in the conditions that it is. Because what you have here is a housing development next to an airport. Whether you assign hangars or not. What you will have is public access for the air, public access down to the hangars and everything else. If this approved as shown the minimum that the commission should require is that those hangars, if it is build like this, be assigned to a lot and be specified as airplane hanger only. The best conditions that you could have is a minimum of half acre lots with a requirement to be able to build hangars on the lot, in such, is an air park. With this development like this the majority of houses that will be built will not be aviation people. If it is kept as an aviation development you will probably get mostly, if not all, aviation people. There is a big demand for this. But if it is done in this form you will not have this in this park. I can give you an approximate valuation of what it is valued at where I live and that is in excess of \$100,000 for just that access to the runway. Twelve years ago it was \$25,000 and now it is approx. \$100,000. But the availability to runway and to be able to keep an airplane is a far, far in excess of \$100,000. And the property, the evaluation of the property goes up exponentially. So these are some of the things to consider. One of the things that I would caution the commission is that if there are any future build up of the Eatonville Airport, such as, expansion and or traffic brought in, such as, businesses and other things, if a development like this that does penetrate FAR77 airspace it can cause trouble in the future. You will have some problems, as far as, money from both the FAA for matching funds and safe fund. So this is one of the things to consider.

**Lind** Mr. Price you do realize that this is not a private airport. This is a public airport, don't you?

**Price** yes sir it is. I live on a public airport.

**Lind** and therefore Shady Acres is more private airport than it is a public airport.

**Price** it is privately owned but it is opened to the public.

**Lind** to take off and land but not to wander around it.

**Price** no sir.

**Lind** if someone comes walking by your place you probably have private property signs up don't you.

**Price** yes we do.

**Lind** and thus there are going to differences on it. Now did you bring a design standard showing recommended designs and so on.

**Price** no sir. I am only making comments only.

**Lind** so these are your opinions?

**Price** these are my opinions.

**Harrison Christian**, Eatonville, WA

I would like to compliment the developer on this type of plan. I think it has many, many merits that have not been considered here tonight. One of them is the fact that I have flown small aircraft a little bit in the past and when you shut them off the propeller doesn't stop very quick. I also have, believe it or not at my young age, eight grandchildren and when I drive up in my pickup they come running out to see me. I think there is great merit in having the airport or the development the way it is. People can walk down to their hangers. I think that there is need for exercise and I would a lot rather put my plane away down there and walk up and see my children or grandchildren and not have them run out to a taxiing airplane come up to the front door or the front garage. I think that there is some discontent with what he doing here and I think he is doing a wonderful job. I want to go on record as saying that. Thank you.

**Beach** we will put you down as a proponent instead of as an opponent.

**Charlie Pool**, Eatonville, WA

I have been on the airport for about 30 years and I think what we have here is a people planning on a airport that are not aviators. Are any of the planning commissioners aviators? What I haven't heard yet is, the question I have and I would like to talk about it a

little bit after I ask it, if there is any, on it is, what is the jurisdiction of the Town of Eatonville Municipal Corporation.

**Beach** what do you mean by that question. I am not trying to avoid the question, I am just trying to figure

**Pool** have the attorney, if he wants to talk about it. I will tell you what it is though. Jurisdiction means “authority of law”. So what is the authority of law of the Town of Eatonville Municipal Corporation?

**Beach** Mr. Mack do you want to address that? (Mr. Mack replies away from microphone.)

**Pool** if I may speak a little more because this word venue ties in with the FAR77. There was a question there that the FAA doesn't have any regulations any ability to enforce their regulations. They do. Because on the airport, in the venue of the airport, the FAA has a greater, higher jurisdiction than the Town of Eatonville. On the airport venue. So this is what the Planning Commission needs to understand and the town attorneys need to understand what is the jurisdiction, what venue are we talking about in order to exercise that jurisdiction in. Then your FAR77 is basically mute when you address those issues. I'm not against this plan, I am basically for it but the Planning Commission needs to understand jurisdiction and venue. This is what's going to get you in trouble if someone has an accident out there when you willfully and knowingly violate FAR77. But if you put a notice to airman out on this that you do have a violation of FAR77 then it is up to the airman to take proper caution not to hit the buildings or whatever.

**Beach** my understanding is that that occurs as a matter of course when the building plans are submitted to the FAA that they then make notice of any obstructions. Isn't that

**Pool** in regard to FAR77 the north end of the runway, runway 16 has been in violation of FAR77 ever since I have been on the airport. But, so what (laugh).

**Lind** Mr. Pool I think you are making the point here that any violations of FAR77, how do I put this, become null and void as far as the FAA is. As if there is a legal documentation sent to the FAA noting that a condition exists where it is not in accordance with FAR77. You note that the north end of the runway. I have heard that there is a notum. I think that is what you call them a notice to airman, a notum on the runway to watch out for elk and maybe a couple of others so the implication of what you are saying here is if we have some areas on the airport where we penetrate FAR77 spaces for various reasons if those areas are noted in writ documentation to the FAA then the legal liability is not there because the notum goes out. Is that correct?

**Pool** that is correct to a certain extent. The only time that you are going to have a problem with this is at night. Daytime, you are most likely not going to have a problem. This airport is, notoriously, in a hole. If you fly into here at night you are flying into a black hole and the only thing that you can see is the runway lights and the building lights. So these buildings will have to be well lit up, also, because they are in violation of FAR77. If we get back to the issue of jurisdiction and venue because the FAA will not get into politics, I can tell you that. They will not get into a political issue fighting the Town of Eatonville. What they will do is

let the attorneys hash that out. If you have an accident that happens in the venue of the airport that's when you will be hurting. That's when the FAA will come in because that's their higher jurisdiction is the venue of the airport. And venue means property, geographical property, that the jurisdiction is exercised in. Jurisdiction means authority of law. And the FAA has a higher authority of law in that venue than the Town of Eatonville.

**Beach** I think that you have covered that. You have said that. Do you have additional comments that you wish to make?

**Pool** I am for it. You can put me down as a proponent that I say it is a good deal. It will make money for the Town of Eatonville which I know you people are interested in. This issue of venue and jurisdiction really should be looked into.

**Beach** Mr. Mack do you wish to make any comment on this jurisdiction and venue issue.

**Mack** Mr. Pool and I have had what could be described as interesting discussions or at least one on this subject. Generally the terms are. I actually brought my Blacks Law Dictionary from my years in law school so it's old, relatively. The terms are essentially judicial terms. So jurisdiction deals with those subjects that a court can address. Venue deals with the appropriate location for the application for the place where the determination of that takes place. I don't think that you want to take a long time on this tonight. But venue means the neighborhood, place or country in which a legally cognizant able action has occurred and is to be judged. So in the land use context to take those terms, which are really judicial terms, and apply them in the land use context can be misleading. In my view the Town of Eatonville, of course, has authority granted by the State of Washington and it's only authority is to grant by the State of Washington by the State Legislature to do various things. And among them is to plan for appropriate land uses and then adopt development regulations for those uses to approve preliminary plats, like you are doing now. And venue, in that term is, to me it is comparable to the boundaries of the town. That authority is applicable throughout the boundaries of the town. But to use in a judicial context the definitions and things simply don't apply. The FAA is similar to the town, in the sense that, it is a creation of law. But a federal law. So the congress has created it and it only has the authority granted it by the Congress similar to the town only the authority granted by the State Legislature and if I go into the regulations later it has authority, specifically, to adopt certain types of regulations. Some of which adopt advisory guidelines, some of them have mandates, some of them have penalties attached, some of them authorize hearings. There is just a whole variety of them. This came up earlier today, or this evening to call the term regulation comprehends a lot of different things. From things that are mandatory with penalties attached to basically guidelines and so it's a little confusing sometimes to think that they are not all the same. Just as the codes that the town council adopts run a whole gamut from having mandatory criminal provisions to them for enforcement to basically be guidelines. So I don't know that I agree that the FAA has a great jurisdiction within the venue at the airport. The only government that has any authority to adopt land use controls for that area is the Town of Eatonville. That authority derives from the State Legislature which in turn, I don't think that you want to get into, well you probably know more than I do about it. Into the acceptance of the state and the \_\_\_\_\_ union the various acts of 1889 delegating authority to the State of Washington. That's the authority. The authorities are sort of, they are really different, and they apply in different spheres. I don't know if I

answered your question. I could read you the entries for jurisdiction which are much longer and I could read them for you.

**Beach** no. We have exhausted this subject. At least temporarily. I am going to recognize one additional person and then we are going to take a break.

**Dale Kemp**, Weyerhaeuser Road, Eatonville, WA

I am against this for one reason. The entrance to the thing itself. There used to be an entrance down at the other end originally. Where they have the entrance now everybody come out and shines through our houses. If they make the entrance 400 foot further down it wouldn't shine into anybody's houses they were leaving.

**Beach** 400 hundred feet?

**Kemp** north, not south. North. There are no house that far down. Across.

**Beach** how deep is your lot? Not the lot as a whole but how far back from the right-of-way of the street is the front of your house?

**Kemp** 25 foot, I believe.

**Beach** it's pretty shallow. All those house are really quite shallow. So in the conditions that the town planner drew up he specifies one lot, which may not be the appropriate lot any longer since they have changed where the location of the street, that the owners of that lot should be paid \$500. for some sort of buffer or barrier. Do you have a reaction to that?

**Kemp** ya I think they should be paid a little more than that for the inconvenience.

**Frink** what would be your suggestion to eliminate the lights coming into your property?

**Kemp** move the entrance north, probably about 400 foot. It's 300 foot from the corner of my property line down to Sally's house, past hers, there 100 foot lots there. So they would be 300 foot down. Minimum.

**Schaub** what would happen, Mr. Kemp, if the road coming out of this proposed project the people would go in an angle coming out of that. Rather than 90 degrees to Weyerhaeuser Road and the lights shining on your place if the people came out

**Kemp** if they come out at an angle they would shine in the neighbors house.

- **Arlen Paranto** entered a photograph into the record. Also Bond distributed FAA FAR77 as an exhibit in the Aviator Heights hearing into the record.

**Ann Dohoerty**, Weyerhaeuser Road, Eatonville, WA

I have several questions Mr. Chairman and comments. I have some questions and comments on behalf of some other folks who do not wish to speak for themselves or are not able to be here tonight. One of my questions is what happens to the land in the situation if the plat application is denied.

**Beach** I think that is a relatively simple question. Mr. Bond or Mr. Kast. If the questions are this fairly straight forward then we will just have him answer them as you come to them.

**Bond** well if the plat application is denied it would still have to go to town council after this, if I'm not mistaken. I could also be denied by town council no development would take place and they could resubmit an application with a different set of plans but as far as changes at the site only, on going changes as far as what they are able to legally do under the Eatonville Municipal Code.

**Dohoerty** so would it then remain, for all functional purposes, an open pit mine.

**Bond** they would continue to using the land in accordance with the clearing and grading permit which they were issued in July 2005.

**Beach** now there is a limit to the amount of materials that they can take out.

**Bond** there were limits specified on that permit and I believe it was 30,000 cubic yards.

**Dohoerty** what is the current level that they have excavated?

**Bond** I don't have the exact estimates on what has been excavated but they are roughly to the elevation which was proposed in the application. They had preliminary drawings that showed the existing topography and the proposed topography and estimated that amount of material to be 30,000 cubic yards. The area has been brought to just about that level.

**Dohoerty** so it would remain looking dusty.

**Bond** the site is so porous that there is really not a huge need for ground cover except in areas where there is potential for erosion which they did grind all of the stumps and debris and covered the slopes with that. Other than that it would remain unchanged unless some other concern came up.

**Dohoerty** but there is a tremendous amount of dust that is blown across the road and is completely coating our properties across the road. Inside the house, outside the house, cars, everything. I have some health issues that have developed since this project began, as well.

**Beach** we don't want to get into the matter of the, she asked the question what would happen if this were denied and I don't think that we need to get into the question of additional mining at this point. Essentially nothing, it would stay as what it is now. What is your next question.

**Dohoerty** there has been mention of a pittance of \$500. mitigation for the lights coming into the new persons house. What about mitigation for us that have been living with this situation and been awakened and impacted on a daily basis, almost. Up to six days a week, up to twelve to sixteen hours a day during the summer for the past, nearly one and a half years.

**Beach** that is not an issue for us tonight because we are dealing with this plat map. You may have a legitimate concern. I am not denying that but that is not a part of this.

**Dohoerty** I would like to go on record as agreeing with Mr. Kemp wanting to know why the entrance could not be moved to the north where it actually had previously been where it would not impact current residents of Weyerhaeuser Road North. I had written a note here, something about no street lights in the new development. Is that correct, did I misunderstand that?

**Bond** the issue of street lights in accordance with the aerospace zoning. Street lights are prohibited when there is an issue of the road being a taxi way because they are obstacles to an aircraft's wing span and also because they can be recognized incorrectly as runway lighting as opposed to the actual runway. So we do not have any street light requirements for this development other than potential ground lighting and lighting on individual houses.

**Dohoerty** in light of that I have some safety concerns for the future residents if there are no street lights. If this development is approved I would like to know what the proposed construction time frame is, including starting and ending dates, daily start and end work times, including days of the week of the construction operation.

**Beach** we will leave that to the applicant to address.

**Dohoerty** there have been a couple of questions of whose responsible for all the dust issues and the non compliance of that. The neighbors have reported having called and complained.

**Beach** that is back to the mining operation. So that is not on this.

**Dohoerty** I would also like some clarity because we have had several times when it has gone back and forth and it has never been truly clarified whether or not it will be an exclusive aviation community and only aviators will be permitted to purchase those properties. At the last meeting there was contradictory testimony provided and the last thing I remember being said by applicants council was whatever the commission wants us to do. So at some time I would really like some clarity on that.

**Beach** there has been no decision on that.

**Dohoerty** Mr. Swanson wanted me to bring up that he would like some provision for transient tie downs on the airport, at some point. When the airport was constructed there were no provision made for that. I guess those were my major questions for now. Oh I do have one more. This is related in the fact that the current site development and site preparation is basically phase one for this proposed plat application. I would like to know why there was no public notice or opportunity for public input on that phase of the project.

**Beach** on site preparation? I can in my mind make a distinction between site preparation and mining.

**Dohoerty** that's the way it's been touted as site development or site preparation. And why was there no public notification for those that would be directly effected on adjacent homeowner lots?

**Bond** well I know that this project has been ongoing for over a year and a half now and the permits for this project were issued prior to my arrival and sub sequentially the regulations regarding erosion control in site development have changed some in that time frame and as far as the requirements at that time I don't know entirely how the permit was filed and what types of review were undertaken. I know that there is information in the file that specifies conditions for erosion control and what not but I don't know who or how a determination was made as far as public notice and those sort of things. But I don't think that is really an inapplicable part of this development application. I think that we are considering the preliminary plat and work that is going to done in regard to the proposal which is before you and not in regard to previous clearing and grading.

**Beach** I allowed this where I didn't allow the other things that I thought where directly mining because the configuration of the land, they are making use of a certain configuration of the land which they have created and so that to me is site preparation even though it occurred before they made their application. If they had prepared the site differently they might have entirely different application. To me that is a distraction maybe in other peoples minds it's not a distinction.

**Bond** I think in the future, certainly, the site development should be processed as part of the plat application and I have made note of that in other applications that have come in since I have been working for the town. But the permit was issued and it's valid I think for two full years. The clearing and grading permit that they have and I don't know what, if they are not doing anything specifically that violates our code I don't know that there is anything that we can do to revoke the permit that was issued.

**Dohoerty** I guess I would like to make the comment that even though the permit was issued to you accepting the job it is still, as far as I understand it, your job to administer and be familiar with the conditions of those permits. Is that not correct?

**Bond** spoke away from microphone.

**Beach** I don't think that we are going to pursue that particular matter any further.

**Dohoerty** I just wanted it noted that the only way I found out about this proposed development, scuttle butt, it's a small town I came home from work one night and the tree's where gone. The next day the heavy equipment was moving, I was "what is going on?" and I was told that they were going to build houses there. So it was obvious the intention all along but it seems, you know the old saying once the horse is out it is kind of late to close the barn door.

**Beach** I should have noted earlier that Mr. \_\_\_\_\_ has entered the photograph as an exhibit and so that should be noted that that is also an exhibit of this hearing.

**Rick Adams**, Ashford, WA

I don't really have a dog in this fight other than I am a real proponent for small airport being an pilot since 76. One of the biggest threats that we have at the small airports is the encroachment from development. I'm a little late at this so if I'm repetitive please bare with me cause I'm sure there has been a lot of negotiation and discussion between council, developer and members of the board here as well as citizens on a number of these issues. One thing that has not come up this evening and I have not read in the newspaper has there been any request by the town council for communications with your insurance carrier? For review of the proposed project as we are looking at this. That in relation to safety and public access and egress to and from the airstrip and taxi way would be an issue that maybe bared in additional cost associated with potential risk that may be burdened upon the tax payers in the community. You may want to take a look at that and in some manner get an answer from you insurance carrier about how that would relate to an increase and expense associated with this form of development and they may make some recommendations above and beyond what you may hear from these folks in this room as to what would be appropriate to limit some liability to the town. On that note there should be a risk evaluation proposed or an assessment proposed by you folks. I think that would be a good idea. With copies of the record and communications and some communications and discussions with your carrier they should be involved in some of these negotiations. I think it would be good for everybody especially the tax payer. When these lots are sold there should be some form of deed notification that upon every sale, third or fourth owner down the line, that this is adjacent to the airport and to protect that airport these folks have to understand that they are living next to one.

**Beach** one of the conditions is it is on the map which says it's an airport.

**Adams** you would be surprised how may people buy things from out of town on the internet today and they come and sign the papers and site unseen and they look at the real estate ads they buy these things and before they know it the tree's are up fifteen years from now and they wake up one morning and these airplanes are taxiing out at six in the morning. The first call goes to the mayor and just a heads up. It will be on the title plat notification, very good. And there is additional risk who's going to accept the responsibility, the fiscal responsibility for any additional risk associated with the properties and kids and that sort of thing. There may be a fence that will solve that issue but a recommendation from your insurance company might help if a suit ever arises later on. To be consistent with airport zoning, I'm assuming, and I spoke with a gentleman earlier about, there will be a fence I guess to separate this property from the airport, that's good. But I did notice there is a road . . .stepped away from microphone. . .if you plan to expand that ingressing access to Lynch Creek Road there. I would propose that any of these lots be tied in with the hanger and they should not be separated. I heard some discussion that may have already have taken place to insure the compatibility of the ownership understands the airport. With that anywhere along the signage here where you've got road at the ingress point that there be signs about low flying aircraft and that there are taxi aircraft and there is danger associated with all this. I'm sure you have heard it this evening before but each permit would have to be review by the FAA but there is also things like short wave and hamm antennas that you are going to have to be aware of, some guys are hobbies. Those are issues and then one thing that you may want to talk to is your local homeland security representative. Access to small airports today is considered a threat by the Federal Government. I don't consider it much of one but you

don't want to get a phone call one of these days saying how did you keep the public from your airport. Or unauthorized access to your airport because of the private air crafters associated with the use of that. So just a couple of things to look at. I do think that these fellows are doing a good job like Mr. Christian. I have been on the other side of the fence too. My thought is to tie this as close to the aviation community as possible because try someday to build an airport next to a community. If you have got one hang on to it, protect it for all it's worth because their getting harder to come by. And they are going to become an increasingly important aspect for safety purposes for medical evacuation, emergencies and light industrial. That is all I have to say and thanks for your time.

**Brenden Pierce**, 425 Jet Court East, Eatonville, WA

I'm a proponent of development. I own an excavation company myself and I derive all my income from there being more lots in this area so I don't have to drive so far to go to work. My concern on this is that living on the airport I want the airport to stay viable as most of us here do. One thing I don't really understand is why we are running this variance at the same time running this short plat. I just seems like some of these things have been done in an odd manner lately. I've been involved with this before we never could get a site development permit until our short plat had gone through this process before. Now I heard him say that in the future that he plans on not letting people do that but that was something that we were never allowed to do before. We didn't start moving dirt until we had a permit. We definitely didn't change grades and add 15 13 foot fills on property. There is not body out there to inspect the compaction of that property and that is usually done with an inspector that is out there full time for the city and that is paid for, usually, by the developer. So that is one of my concerns I have concerns that we are not doing these things in the correct order. I don't think that we should be applying for a variance and negotiating at every meeting a different map. I recently received a variance to get a septic system put on my property but I wasn't apply for the septic variance and getting the septic design at the same time. I had to receive the variance before I could go forward with the rest of the project and get the design. I just think that we are trying to be expedient about this, I can understand that, it's always nice to make things go quickly but let's face it these things go a lot quicker in Eatonville than anywhere else in the county. Or at least anywhere in the county itself not so much in other cities in the county so it's a pretty speedy process here comparably and I don't know why we should pile these things on top of each other and have meetings that run until 10 o'clock at night. I'm completely opposed to the variance. I think it's great that Mr. Nybo is trying to make an aviation related deal here and I think it would be great if we could get more people that want to live in this area that have airplanes that are willing to buy \$500,000 houses I think that is all good. But I don't think that condoing that property below is every going to get a hanger build down there and definitely I heard Nick say that those pieces down there where going to have a different tax number. How can you size those lots down, realistically, to less than a half acre and then have another little piece down there that those people could sell off at any given time. And then they don't meet the requirements of being in that zoning. I think that those, if they are going to do that the way I though Nick was telling me before when he explained this was that those were going to be individual lots down below and they would be somehow tied as tract A, B to each lot above and that owner would have the right to go down and build a hanger down there on his own. As it is now it looks like you have to build six hangers all together. So you have to find six people that are aviation people next door to each one of you before you can build a hanger. Or are they going to build the hangers before they sell the lots? If they are going to build the

hangers before they sell the lots and they are going to sell the lot with a hanger then I can maybe understand that but just condoing the property, it doesn't make any sense. It's not going to bring any aviation people in here it's a straw dog. It's just something to get this process through and build houses in there. And that is not what we want in the aviation area of town. We want that to be a aviation area so that we don't have people saying let's close that airport down. But we would be thrilled, and I have friends that when they heard I was moving to an airport thought I'd love to do that if there is anymore property out there. And I tell them about this plat that is coming up but if you can't utilize it as aviation and it made so difficult by condoing this property down here it's going to be so difficult to really make that aviation friendly at all. And I think that, first of all, you should look at this variance first. Decide whether you are going to grant it or not and then have them draw the plans up to meet the variance. And I don't think that we should be looking at things at the same time. And I think that those hangers should not be able to be sold off separate from the lots. They should always remain with the lot to keep those lots aviation type lots in that zoning. And I would like to see them stay half acre total if you give a lot down below that's a 10<sup>th</sup> of an acre then you should be able to have a lot above that is a 10<sup>th</sup> of an acre less than a half acre. And that would meet the zoning and you could have hangers down there as far as I'm concerned. That's fine. I don't have a problem with that but I really thing that you gotta make it so it's a possibility of people to build a hanger there. Not just something on paper that is going to be so hard to do that none one is going to ever want to try to do it. Because, lets face it, most the people that first come in there are not going to be aviation people. That's fine, there buying a nice home in a nice neighborhood next to the airport with the possibility of them being able to put a hanger in there some day. But if it's a condoed situation then they got to go through.

**Beach** I think your beginning to repeat yourself here.

**Arlen Paranto**, 210 Orchard Avenue South, Eatonville, WA

I love pilots and flying. I think that's one of the great things in life. My dad had an airplane in 1946 we had a Champion and I was the shooter out of that for coyotes in South Dakota and there are not many coyotes left there anymore now. But I have always been associated with pilots and flying people and I think the air park version of this would be an outstanding asset to the Town of Eatonville and I hope that the developer can see his way to make this a truly air park situation instead of the housing development that we see before us now. This also leaves to a tremendous liability I think for the town if they accept it as is. There have two airplane crashes on this field in the past, on fatality. And it will happen again and if it happens to hit one of these houses there is going to be more attorneys in town than the motel will hold. I'm really concerned about the liability issue and I think it should be strongly considered. Thank you.

**Hal Burlingame**, 520 Airport Road East, Eatonville, WA

The development itself has a potential to really be an enhancement for the airport. We have talked about air parks and so forth and I think that with a little bit of ingenuity this could be a redraw to make it a more of a residential air park. The road, if you have the lots large enough you could have a house and a hanger on them. Then the road has to be a minimum of probably fifty feet wide because almost all light planes have a 36 foot wing span and you certainly don't want to try to taxi on a 40 foot wide road. There is not enough latitude for just not taxiing straight. Other than that I think the only other concern that I

would have is, ultimately, the access to the runway itself by people that are not flying but curiosity people. We have a lot of people that walk around the airport now and there is no problem but up until when I resigned as airport manager since 9/11 there has been multiple requests for security and fencing and things like that and I would rather leave it the way it is rather than having to see a bunch of chain link fences put up around because they themselves other than making a good crash barrier if your brakes fail it's about the only good use I can see for them. The only area that I would be concerned about would be the access onto the airport on that south end and that would be my only concern. I don't think FAR77 is a real big issue. There are places that exceed or stick up into the FAA designated FAR77 they are all noted in either the airport facilities directory or the notices \_\_\_\_\_. So if a pilot hits something like that that's already marked or put down as a highest hazard of navigation it's his fault. Not necessarily the people that who had that, for example the radio tower on the south end of the airport or south end of town clear up there on the hill. There are some notices about that. There are several things like that that can be mitigated so that you don't have any liability. But if the town approves this and would allow incursion up into the FAR77 zone then I think that they would be assuming some liability that I wouldn't want to be on the council at that point if they approved that. I think that you would face the possibility of incurring some person liability. That's about all I have to say I don't have any other axe to grind on this thing. I'd like to see a nice development there. I think the closest one that we have is, that I have seen recently, Crest Air Park and it's a excellent private development.

**Beach** everyone has spoken that wishes to speak. You can speak a second time since no one has asked. As long as you go on to something different.

**Ann Dohoerty**, Weyerhaeuser Road, Eatonville, WA

I don't think that I could say one way or the other if I'm for or against the development at this point in time. Continuing to live with that is far less appealing to me than having a housing development. Again, with moving so I don't have head lights in my room every morning. I just wanted to clear that up I don't know if I would say I was for or against, necessarily, the development. But preferable to what we have.

**Beach** we will turn it over now to the applicant in terms of commenting on what has been said and any other issues that they wish to raise at this point.

**David Tift**, Legal Council for the applicant.

I would like to spend a few minutes in light of the fairly late hour addressing some of the issues that have been raised. There obviously have been dozens of issues raised over the last couple of hours. I will try and address the major ones and I will open myself up to any questions that you commissioners might have. Let me just tell you briefly where I am going here as kind of an outline of my presentation. I think that there are several sets of governmental entities who have the opportunity or don't have the opportunity under the applicable law to comment here. I want to talk about the federal process. I'm mindful of the Chairman's question as to how the FAA processes unfolded. Commissioner Lind's questions with regard to application of FAR77 and some of the related issues. I then want to address the state comments that have been submitted to this commission and finally when I think we are in terms of your local analysis. Also, want to comment a little bit on the strong special interest I think that are being brought to bear here. I want to comment on the

Puget Sound regional council and then I will conclude. First of all with regard to the FAA, I was the person who handles the application process for the FAA. The process was, basically, a three stage process. When our law firm was retained I made contact with the FAA and explained to them that we were going to be initiating the FAR77 application process. In response to our request we met with two people from the FAA here in Eatonville and drove around the airport. At the conclusion of that drive around we were advised that the FAA wanted two submittals from us. One for the lower portion of the subdivision which . . .some one spoke away from microphone to Tift. . .FAA also advised us then that we need a second application for the upper row of houses or lots. The FAA further specified that they wanted approximate locations of each of the structures and they wanted elevations shoot for each of the houses that we anticipated putting on each of the lots and then they wanted us to select one lot from each row so that there would, in this case, be a lot 5 submittal and if memory serves me correctly and I believe we have made the applications available to you so you can verify this. . . some one spoke away from microphone. . .now the FAA gave us flexibility in terms of the lots that we would choose and our goal once the foot prints were established and the heights were shoot our goal was to submit the two highest lots, or rather, the highest lot in the first row and highest lot in the second row. In other words present the worse case scenario to the FAA in terms of height intrusion. The surveying process, the drawing process was completed and I think it's important that this commission understand exactly what we did submit to the FAA. There were two sets of the forms that that are designated by the FAR's and attached to that were drawings showing where each of the buildings would be constructed including the hangers. I think that is important because it has been suggested to you tonight, incorrectly, that the FAA was never notified as to where we proposed the location of the hangers. Now the process them initially followed it's normal course under part 77 and that process was it was submitted to an office down in Fort Worth, Texas. And they gave notice, basically, at a national level that we were proposing to do this construction near the Eatonville Airport. The significant comments, the way I understand it, in my discussion with the gentleman who ran this process out of Fort Worth was that the local office of the FAA and were on the Northwest Mountain Region they had certain comment and that the Washington Department of Transportation had comments. So the national review was terminated at that point and the matter was referred to our local office here in Renton, the Northwest Mountain Region. I then had a conversation with the gentleman within FAA who was going to initiate this analysis and he indicated to us that it would take four to six weeks. I was out of the country last week and the week before so I missed the prior hearing. When I got to work this morning it was the first opportunity I had to see the November 14, 2006 letter that sets out the official position of the Federal Aviation Administration with regard to this subdivision. So it was a fairly long and protracted process and what happened was we went from obtaining local guidance on how to do the application that was summated to the national level then it was sent back to the local level and the people that told us how to do the application, or how they wanted the application, where ultimately were not the people who did the analysis. So we have a peculiar result as a result of that fairly protracted and winding process in that the November 14, 2006 letter and analysis from the FAA comments just on lot five. That's both the good news and the bad news from our perspective because as the exhibits indicate to the commission lot five is here at the end of the runway and I would respectful suggest to you that it is of significance that the FAA approves the construction of a two story house at the end of the run way on lot because we believe that if there are safety issues that are posed by any of these lots it is lot five. We understand from

the November 14 letter that we do need to make a subsequent application now to Mr. Johnson and to Mr. Bryant. We will be doing that. As of the time that I let Seattle to come here today, this afternoon I had not been able to talk to Mr. Johnson. I hope I am making it clear that the focus on the FAA and their approval of the construction just of lot five is a peculiar result of the process with us talking to several people within the FAA and basically trying to satisfy several masters. It appears, at least, from our initial analysis of the November 14 position taken by the FAA that if they approve the hard one then the application in regard to the easier lots, by easier I'm referring to the lesser amount of intrusion, and should not be a problem. I also wanted to address, briefly, the legal analysis that I believe you should be applying to part 77. I would concur with the city attorneys testimony earlier tonight that part 77 requires us as the applicants to follow a certain process. That process was followed that process was completed. We would not have a letter from the Federal Aviation Administration if they did not believe that they received all the information that was required for them to do the analysis. Part 77 has been fully complied with. Now the way that I understand your local ordinance the Federal Aviation Administration is what I would call a commenting agency. The comments are now part of the record. They do not, in their application, of the facts to the regulation, specifically, the facts of how we are going to build this sub-division applied to the part 77 process. They do not find problem with this construction adjacent to the Eatonville airport. With regard to the State my colleague Mr. Lang submit a packet to this commission at the start of the hearing this afternoon or this evening rather. We have also provided a copy to Mr. Kast and Mr. Bond and the city attorney for their analysis. Under your regulatory process the State of Washington is not a commenting agency. The State of Washington has taken it upon themselves to submit comment to this commission. Bluntly I think their comments were bordering on reckless because as the packet demonstrates to you we asked them to supply us with a copy of their files specifically including any information that the State of Washington had that would back up any concerns that they perceived with regard to this. Mr. Kast emphasized to each of you should facts should control here. I would respectfully suggest that the facts are that the State of Washington has no facts that would back up any opposition that they have articulated. I was hoping someone from the State of Washington DOT would be here today so that we could take the opportunity to exercise our right to cross examine because we have repeatedly asked them in two Freedom of Information Act requests, where's the beef, to paraphrase the old commercial. And they have not seen fit to show us any evidence, any facts to use Mr. Kast analysis that there is any problem of any seriousness or any significance with regard to this development. Where are we? I believe your local analysis, obviously, controls. The Federal Government is a commenting agency they have commented and said that based with regards to lot five and presumably with regards to all of the other lots constructing houses as proposed is not opposed by the FAA. We listen to and took into account this commissions observations two weeks ago and modified our proposal as a result. Now I heard some of the good citizens of Eatonville say they were, frankly, uncomfortable with that process. I would respectfully suggest each of you that what that indicates is responsiveness on our part. We are listening to what you had to say. And specifically what we are proposing as a result to what you had to say two weeks ago is a couple of things. First of all the hangers have been moved back away from the runway and additional 15 feet. I think that is important because obviously a key consideration for all of us is safety. Secondly, the way we understand 2006-6 there are certain zones that need to be observed and kept in violet in all intense and purpose. We have moved the configuration of the sub-division so that that only a portion of one lot now

encroaches in what is designated as zone three under 2006-6 and as the testimony of Mr. Foley indicated to you at the start of the evening the house on that single lot can be placed in a fashion so that it is completely outside of zone three. Now we heard testimony from several pilots, including several pilots from outside the area. I would respectfully suggest that the talk that we have heard with regard to the Federal Government over the last several years with regard to special interest having their sway. We have a mini version of that here. For reasons that I have not been able to determine this has become somewhat of a cause for the Airplane Owners and Pilots Association. I believe it is the case that some of the out of town testimony that you have received was organized by AOPA. AOPA is not a government agency it is for all intense and purposes a special interest with their own agenda. They are, obviously, given the opportunity for free speech and the right to comment as they have here today. But they are not a government agency, obviously, they are not a commenting agency like the FAA for example. I would respectfully suggest that the commission should be a little wary of special interest like AOPA. Similarly, the Puget Sound Regional Council has weighed in with a letter here. Again, in terms of the jurisdiction of analysis the Puget Sound Regional Council has no jurisdiction what so ever with regard to how land use occurs within the City of Eatonville. So in conclusion we believe that the analysis articulated in particular by you Mr. Chairman is exactly right. Is this real estate development and the variance in compliance with 2006-6 which is the applicable regulation. And we would respectful suggest that in every respect this proposed sub-division and the variance are in complete compliance with 2006-6 and as a result it should be approved by this commission. At this point I would be happy to answer any questions that any of the commissioners has.

**Beach** let me ask question follow up the Puget Sound Regional Council letter which certainly was a interesting letter I must say. You say they have no jurisdiction. What is the evidence for that statement that they have no jurisdiction.

**Tift** at a very basic level I'm a lawyer licensed in the State of Washington have been for 23 years. The way that I understand the process is very similar to your city attorney. There are certain powers that are given certain government agencies. The power to regulate local land use sits right here and I'm talking to you. The Puget Sound Regional Council, the way that I understand it, and here I am happy to be corrected it is local government entity which is comprised of the county and city governments that rim Puget Sound and it has a wonderful goal and mandate and that is as we continue to grow in this area that transportation will be coordinated and approached in a regional fashion rather than on a county bases or dominated by Seattle or whatever. Again, it is my understanding that the Puget Sound Regional Council does not have any jurisdiction over land use. Does that answer you question Mr. Chairman?

**Beach** yes. Mr. Mack would you agree with that?

. . .response away from microphone. . .

**Mart Kast** the Puget Sound Regional Council gets its substance authority from the state legislation. It's created under a statute on the books in the State of Washington and it is a voluntary organization of city's and county's, Indian tribes and now they have added the port districts. It is a voluntary association in the sense that the municipalities may elect to be

members of it and some do and some don't. Eatonville is a member of the Puget Sound Regional Council. Their mission is transportation planning their mission is delegated to them from the Federal Government for the expenditure of Federal Transportation funds and they include the various modes, the roads, the ferries, air operations and public transit. Their roll is to prepare long range transportation plan which they have done and then to administer and comment on the expenditure of federal funds to make sure that those federal funds are expended in accordance with the long range transportation plan. The Growth Management Act also brings the Puget Sound Regional Council's as they exist through out the state. Puget Sound Regional Council is not the only one and they have been given the responsibility to prepare multi county planning policy to insure that the land use plans throughout the four counties have some consistency between the various counties. The process is ongoing right now to update those policy as they exist. When it comes to airport operation the Puget Sound Regional Council traditionally has prepared a air transportation forecast for operations at the major airports such as SeaTac and I believe that is the only one that they have done. Also they have a federal charter to prepare transportation improvements programs and then administer certain funds are grant through them to be administered directly. The application that the Town of Eatonville filed with the Puget Sound Regional Council we received highway funds for the downtown revitalization corridor project came directly from the Puget Sound Regional Council. Our intent is to follow that study grant with the Capital Grant Funds and they will be in charge of that. They will make a determination whether we will be granted or not. They do have a planning function and for some federally funded transportation activities they do have a direct granting function delegated to them by the Federal Department of Transportation. They do not have any authority to deal with local permitting issues whether they are land use, building permits or sewer or water issues. It is very unusual to see a letter from them in that regard given to the town and listing their concerns about the airport. They have no authority in that area and the letter should be considered like any other comment from any individual in this proceeding or those who have filed comments previously.

**Schaub** I have listened to a lot of people here tonight that they really like the idea of what this project is going to do for our community and our for our existing airport. I live out there at the airport and I would like to see it stay in our community and enhanced because it is going to offer things for the future because there will be more and more flying as the years come on. I see in a way that that project up there is going to be some what of a housing development and I don't like that terminology. A lot of the lots are large enough to almost have a house and a hanger on them on the existing layout. Now if I were to. Can I just say what I feel like saying? Can I put it in the form of a question?

**Tift** can I address where I believe you are going and then if I don't hit the mark you can follow up. I became an in-house lawyer for Continental Airlines in 1985 and I go aviation and aviation law in my blood then and I have practice aviation law in one form or another as part of my legal practice since that time. I am unfamiliar with any legal authority for some of these terms that have been thrown around. I have represented home owners at Crest Air Park where a airplane hit a tree and crashed into their house and several fatalities resulted. I saw first hand the terrible things that can happen as a result of that. Crest is an air park. I'm unfamiliar with exactly what an air park is under the Federal Aviation Regulations of the United States. When I sat here tonight and I heard this testimony with regard to it was important that this be an air park. I guess I don't completely understand what that is. Shady

Acres is a version of houses and hangers near an airport. Crest Air Park is a version of houses and hangers near an airport and Aviator Heights the way it is being proposed to this commission is houses and hangers near an airport. Now I am very much aware of the concerns that airports like these are ultimately gobbled up by sub-divisions. I know that has occurred at least once in the State of Washington up in the Blaine area. The little Dutch community that the name of which is escaping me. I believe, Lindon, thank you Mr. Kast. I know that there is some president for that. I would respectfully suggest to you that this particular exhibit shows that there has been development both in terms of hangers and houses around your airport for many years and it did not throw open the door to the ultimate demise of the airport and I don't believe this proposal does that either. Did that answer you question?

**Schaub** somewhat. The airport out there the lots can be a half acre in size. Some of them are an acre some are more than an acre in size. But the smallest in that aerospace area is a half an acre. Now I personally don't like to see just a sub-division placed in there with smaller sized lots sitting up there. Now those lots are not all nineteen thousand, twenty thousand, fifteen thousand square feet. Because you are looking at hill sides, your looking at which makes the construction of that house area a lot smaller. Now I said at our last meeting that one of our other housing developments here in Eatonville some of the houses are constructed right within a foot of the slope. You can't even walk around the construction right now of a couple of the houses unless you have something to hang onto. I don't want to see it here. And if I have a chance to prevent what has happened in the past I want to try and prevent that. Now what I would like to suggest is that people have the opportunity, if they wish, to build a hanger up there on that site. I can see eight to ten lots that a hanger could be built up there. But you have a problem in the sense that the town is going to request you to build sidewalks but when airplanes are using that street, you want to call it a street, it's a taxi way your not required to have sidewalks. So there sixty feet in width. Some arrangement could be made to where people could still have a hanger up above if they wish. Some other people could have a hanger down below if they wish if their lot size is not quite that large. Some kind of a taxi way could come off that alongside that road and down onto the runway without being on that main highway coming off of Weyerhaeuser Road. In the years ahead that is going be a highway for traffic other than what those people are going doing coming in and out. But I think some things can be done with this plan yet that can still meet what some of these people are saying. And still not try and turn this into a housing development. Because right now that is a housing development or I can in vision it being a housing development.

**Tift** you have hit the nail on the head

**Schaub** I hope so.

**Tift** I think that this process can be protracted and sometimes painful one but I think what we are focusing on now shows that this process works. Two concerns with regard to what your talking about that we have identified and I say we in the royal sense. I'm just the lawyer the folks that have done all of the hard work here, the engineers the architects and everybody else have identified two main problems in regards to that that we frankly can't address. People have stood at this podium and thrown around the word liability. Mr. Christian, if my notes are correct pointed out that you've got a problem with regard to

incompatibility with regard to children and pets and otherwise and whirling propellers. In today's lawsuit happy society we are very concerned about selling residential lots where you've got airplanes and whirling propellers coming in and out so at this point in time we can't figure out a way to address that very large liability issue. Second and related to that is the problem of the slope here. We have also heard a number of people raise different questions in regard to the site preparation, the amount of materials that have been removed and those sort of things. We have got a fairly steep sloping piece of property here and single engine aircraft, at least the ones that I'm aware of that are used in general aviation like this, are built to go forward. I don't believe there are aircraft on the market and there are a number of pilots here I invite correction but were not aware of any airplanes that can safely go up a hill. Those two issues are of tremendous concern with regard to these folks that are spending a ton of money trying to bring the development to Eatonville. We're hearing these concerns and as Mr. Foley explained to you in your November meeting what we believe it the correct compromise is to put some sort of tie between each of these lots and a hanger. At this juncture we haven't got the specifics worked out so I don't want to stand here and tell you we've got this nailed. Because there is little or no precedent with regard to this. The idea that we are working with is that when a home owner buys a house they also take some sort of legal ownership of the space within that condominiumized hanger. At this juncture we anticipate that we would control a secondary market so that if I a aspiring pilot move out here and become one of your neighbors but I haven't finished my flying lessons yet I can in essence sub-lease my condominiumized hanger until such time I complete my flight lessons by my Cessna and I can make direct use of that hanger. Where hearing what your saying and we understand it and where trying to address that. I don't think I am violating any conversations when I say over the break I had a very interesting conversation with Mr. VanCleve about this very topic and he and I are going to sit down for the first time next week and continue to brain storm about this very issue. We are very sensitive about this and we are working on it.

**Schaub** I think what some of them are saying here, also, is that that half acre minimum out there 21,500 and your hanger space that you are going to develop is 42 by 36 which 1,512 sq. ft. So if that is going to be a part of the lot or the housing lot that sq. footage is going to be part of the lot? It's going to be

**Tift** no sir. You will buy a lot and you will buy the normal kind of space that you would buy within a condominium which I believe is internal wall to internal wall.

**Schaub** at the last meeting it was suggested that the individuals were going to be running down there to build their own individual hangers.

**Tift** I don't know where that came from.

**Beach** it was unclear as to how this was going to be accomplished. As to if you buy a lot are you also actually buying a hanger or are you just buying space for that hanger.

**Tift** as a lawyer I would say like any other condominium what you are buying is an ownership interest in internal wall to internal wall floor to ceiling in terms of your condominiumized hanger.

**Beach** so as you build the house you are going to be the hangers?

**Tift** I believe the plan at this point and I have to point out that as a spokesman I running precariously close to the boundaries of my knowledge and I should probably hand this over to somebody who has a better understanding of what they are talking about. The idea right now that we are working out both internally and with Steve VanCleve and anyone else that wants to give input in this regard that there will be a tie with the lot and the lot sq. footage will be what the lot sq. footage is. Plus you will get the condominimized version of that hanger but a real estate company will provide a secondary market for that hanger so that, again, using my example if I can't use it the first couple of years and there is somebody that wants to lease it from me I will enter that secondary market and enter into a short term lease with someone so that they can use the hanger.

**Beach** could the housing lot and the hanger become separated in terms of different owners?

**Tift** I don't want to sound like a broken record I am trying to answer your question but that is a piece that I don't believe any of the hard working folks that are working on this have been able to nail down yet. But what I say standing here under oath to you folks is that we anticipate a tie with the lot and the hanger but as I hope I am making clear you don't necessarily have to take possession of that hanger you can enter into a lease through this secondary market that we will create through a real estate company. There will be a tie between the lot and the hanger but you don't necessarily have to take possession of the hanger at the time that you enter into the fee simple ownership of a lot.

**Schaub** why are you asking for a variance from the half acre size lots that are minimum lot sizes at our airport that we have. Why are you asking for a variance in that lot size to go smaller?

**Tift** on that one I would defer to Mr. Foley if I could when he takes the podium.. But generally the idea is that we see to many road blocks with putting the hanger adjacent to the house and there is safety and liability types of issues.

**Schaub** just leave that out of it. Just discuss the half acre minimum lot size that we have in the aerospace zone at the airport.

**Tift** from my mind and maybe it my tainted legal education and background but I think that can't be left out. The hangers for practical and legal purposes can't be adjacent to the house then there is no reason to have the lot drawn in a manner the way it originally was anticipating the hangers. But, again, I can tell by the look on your face that Mr. Foley needs to clarify that for me. I'm sorry I can't

**Lind** whenever we finish down there I have come up with a couple questions.

**Bond** I just wanted to address this issue of the lot size and the variance and we worked very hard to create a solution to this problem of having planes and pedestrians and automobiles commingling on streets and also the issue of planes taxiing up a hill. We were faced with some real challenges for accommodating aircraft compatible residential uses with our own safety and liability issues and it needs to be pointed out that the reason that originally trace C

was identified for individual hanger spots which could be bought and sold independently of the lot and the lots would also have the capability to have a hanger. Part of the reason that the lots are one half acres is safety because of overall density, although, the underlying safety zone, I believe, stipulates that the density can't be greater than four units to the acre and not two units to the acre which is the underlying zoning. Additionally, the other reason that the lots have to be a half an acre is accommodate that aircraft hanger. But because it is the desire of the town to eliminate this potential mixing of cars and pedestrians and planes and also the safety issue of taxiing on the incline we have agreed with the developer and we met with them and tried to work on this solution that because the aggregate area of tract C combined with lots one thru twenty seven equals a net acreage of 13.5 acres that the net density for the entire site of the condiminasized land and the individual lots would equal out to half acre lots if you averaged it. So the average density for the site is two units per acre but we have simply reallocated that density to separate the hangers and houses within the site. That was something we worked out as a compromise to problems that the town had with safety issues and problems that the developer had with their land. That is my brief explanation and I think that Kevin Foley can add to that.

**Valentine** it was about variance. I still trying to run that through my mind why we need a variance. I don't understand it. I can't comprehend it I guess. Because a half acre requirement why can't we maintain the half acre requirement with or without a hanger?

**Tift** let me take a swing at it from this prospective. We can't have our cake and eat it to. We want to come up with some sort of tie between the lot and the hanger that's what I'm hearing you folks say that's what I'm hearing the good citizens or at least some of the citizens of Eatonville say. As Mr. Bond just testified the idea was that the tie in terms of half acres would be a combination of the lot and the space within the condominium. The variance in essence facilitates the tie between the fee simple lot ownership and the condominiumized hanger together.

**Beach** I think that I will call on Mr. Foley just on this point for now. Because Mr. Lind has another question of Tift and so on this particular point of this tie in and why the variance if you can enlighten us on that subject then we will let you go momentarily.

**Foley** well Mr. Chairman, members of the commission I think your staff person Mr. Bond explained that I guess that I would back up just a minute and remind the commission that while the aerospace airport overlay district allows a minimum 21,500 sq. foot lot area you do have a provision in the town code to allow a reduction in that if you meet certain criteria. Now the criteria that we have set forth, that staff has set forth, in their report and in our remarks to that conclude that the variance is appropriate in this particular instance for the reason that Nick and David Tift gave and that it facilitates an appropriate trade off of density transfer to the lot portion of the site visa ve the tracts which one of them will be designated exclusively for airport hanger use. But for that area we would have 21, 500 sq. foot lots. Again, I think I have to emphasize, which I believe we have been trying to do, that there is a trade off, there is criteria that must be met. Public safety, health and welfare we have discussed that. We have also discussed unusual and unique circumstances that are appropriate considerations for decision making bodies, such as yourself to consider when these type of situations arise. After extensive discussion with staff, legal council it has been determined that this is an appropriate application to combine with the preliminary plat and it

allows a reasonable use of the property at a density that is available to this particular property owner. But for the fact that there is an area more suitable for this than putting them on the lot therefore those lots can be a little bit smaller and in this particular case ranging from a low of 12,000 up to an average of 18,000 with several of them still at 21, 500.

**Lind** in addition to the safety concerns putting them down there you have also agreed to pave and put sidewalks in for a certain distance on Weyerhaeuser Road which I might say the Town of Eatonville has been trying to get done for quite some time for safety of children walking to the school.

**Foley** that is correct and that is something that the applicant has accepted as a condition of approval to the preliminary plat when you get off site of a piece of property it gets really dicey whether or not you have the legal authority to impose those conditions. But we saw the advantage, the staff saw the advantage of accommodating safely pedestrians at are going to obviously be a part of this sub-division and their need to get to areas of activity, particular to Center Street. Combined with the variance for a few extra lots on the area designated for lot development that these things together made sense and were agreed upon by \_\_\_\_\_.

**Lind** and I would also note that if you actually take 13.5 acres and divide it out by 27 lots you actually come out with a half acre, 21,780 sq. feet instead of what the ordinance says 21,500 sq. feet. Which is not really a half acre so you actually end up with 280 sq. feet more on the average per lot.

**Foley** I think it is important to also point out that we were very aggressive in arriving at this net density figure. We subtracted the area of the road. We subtracted tract B and C. We wanted to be very cautious and very conservative on that to not take advantage of a bunch of areas and crank them in there and all of a sudden find ourselves with all kinds of additional lots and density that really, probably, didn't make sense. We were conservative in that in applying that density transfer and that resulted in four extra lots.

**Frink** I have a question for you. Are you requiring a certain square footage on those homes. Is there going to be a convenient?

**Foley** there will definitely be covenants, conditions and restrictions.

**Frink** so the homes will be pretty well being built. In other words I'm just going to give you an example. All home have to be at least the bottom floor 1,200 square feet and I'm just. . .

**Foley** it is very possible. One of the most important elements of CC&R's is the architectural guidelines. And that is an element that takes the most time, takes the most thought. It has to be market driven and is developed very carefully. Everything else is operational in a CC&R package. Guidelines are very performance oriented and those have to be very carefully selected and are normally are review and approved by the municipality prior to those being recorded at the same time as the final plat is.

**Frink** the reason that I ask that question is because I know from because I am in real estate that you want to have your sub-division pretty much with the same square footage and not ten houses at 1,200 and ten houses at 2, 000. You want to try and keep your values up.

**Foley** that is where the architectural guidelines becomes exceedingly important is to maintain and accelerate value.

**Frink** I had not been hearing covenants really in this and I don't know if I missed it or not.

**Foley** this sub-division will have a lot of covenants. We talked about the condominium. Now the condominium is a mechanism that will tie a couple of elements together as Mr. Tift and Mr. Bond has explained. Just from a format, sometimes we have to backup a little bit, normally when we present a plat application to a town, city, county or whatever it's normally on this very large sheets and it's on these kind of sheets. Well when you submit a final plat, plat goes this way and you cut it off about here because they require it to be only 18" by 24" sheets. There will be two documents recorded with Aviator Heights. The final plat documents and the condominium documents. Now the CC&R documents will probably be common to both it will be recorded at the same time as well as the condominium. Now the condominium instead of saying final plat of Aviator Heights it's going to say Aviator Heights a condominium for 27 aircraft hangers. And then from there it will have just tract C identified and it will have an airspace. Boom, boom, boom, boom, boom, all the way down. That airspace is legal that is your sandbox in which you build your hanger. Now the owner when he purchase whenever one of those airspaces that corresponds to him he'll likely be given the opportunity to do that, build it himself or to contract it with the developer or somebody else. But he'll do it in accordance with strict guidelines that will be part of the CC&R's package. Again, back to the architectural element, how important that is not only for the proposed homes but for the hanger design. Which, obviously, aren't going to be elaborate but they have to be very carefully laid out. When he purchases his airspace unit he may take a couple of years to build that but he will own that space and it will be limited to the uses that are identified in the CC&R's and what we call the declaration. It will have specific guidelines as to what is built there because it, obviously, has to be compatible with the rest of it because there have to be an architectural flavor to that as well.

**Lind** do you have any comments on weighing on 2006-6 more than you had as it applies to FAA and so on?

**Tift** what comes to mind when you ask that question is how I testified the first time I had the opportunity to testify before this commission back in February. At that time I explained to you that it appeared that we were going to be the guinea pigs under 2006-6 and that has proved to be the case by an expedient factor. We have pioneered the process, if you will, with the FAA, with Washington DOT as we discussed a few minutes ago Puget Sound Regional Council who is now come out of the wood work and I'm not saying that to get brownie points for my client but to point out that as we have this on going discussion tonight and we run into these areas where we can't give you the kind of specificity that you are looking for that's because we are the guinea pigs and we are the first people to go down this road and were trying to work this all out.

**Lind** and how do you think we should deal with that?

**Tift** I think that you need to recognize the tremendous amount of work and thought that have gone into this by people like Kevin Foley and understand that we are, I believe, no only

coming up with a good product for the City of Eatonville but we are fully in compliance with 2006-6 and the variance the way it's set out in the regulations.

**Lind** now number two. As I have listened to the testimony tonight I believe that most of the people are in agreement with the plan here if there is a way to absolutely in perpetuity tie the hanger with the lot above on it and do you see a way to tie those two together in perpetuity where you can't go and sell the hanger off separately or whatever.

**Tift** yes.

**Lind** and so there is a way to put that in when we kick this out some verbiage that you can come up with that will take care of that concern on that we can adopt into our motion as we move this out of here.

**Tift** yes sir. I wouldn't make that the offer that I made a moment ago I'm meeting with Mr. VanCleve next week to get his thoughts amono amono with regard to this very issue and anyone else that has any thoughts we don't want to plop this down in your community and walk away. We want a quality product here that everyone is going to be happy with.

**Lind** and with that you lead right into my third question. I think the implication in what you just said is where not ready to close the public hearing portion on this until you come back with an answer to that question on it and then at that point you would come back and say here is what we agreed to, here is what will work. You are asking yourself to keep it open, is that correct?

**Tift** no sir I am not. I'm startled by how long this process has gone on. To the extent that we have been guinea pigs and we have spent a tremendous amount of time and money on this process I would respectfully but strongly suggest that it is time to get closure on this.

**Lind** so how are we going to get that closure if your going to continue discussion with VanCleve and others and make a motion that moves it out?

**Tift** I believe that you have more than sufficient information in front of this commission, far in excess information to approve not only the sub-division but the variance. And to the extent I can continue to stand here and answer any questions that would provide the answers to make that possible I will stay here till the rooster starts crowing. But we need to get closure on this. I think you folks are probably as tired of this as we are and for the folks that have been coming to this hearing time after time after time I suspect that there is a pretty strong current within the community to get closure on this too. I will stand here having raised my right hand and tell you what Mr. Foley and others have told you also under oath and that is this is not a cookie cutter process that we can implement here. This is the first time to my knowledge any of us have ever gone down this road. We will come up with a tie with the lot and the condominiumized hanger. Again, I hope that I am making myself clear we don't believe that the market forces are such that a makes any sense to immediately require the purchases to take possession of that condominium. We are going to create a secondary market, but the process the way that we are working it through right now is that that would not be the sale of the condominium but rather a lease of short or midterm duration so that there would always be a tie between the lot and the hanger. I believe with

that representation and the kind of testimony you that you have heard in that regard from Mr. Foley and me and others you can go forward and approve this tonight.

**Lind** then my question would be to staff, Mr. Mack, Mr. Kast, maybe Mr. Bond having heard what we have discussed here can you think of a motion that can be framed that would take care of these things that we have been talking about? Can you provide one to the commission that could be used.

**Beach** you have all these conditions and it seems we have to go through each one of them individually and see whether that's the condition we want. Whether we want some other conditions or do we want to take them out and so on. I personally can't see where there is anyway that we can vote on this tonight. I just don't. Even if we sat until midnight going through all the conditions I would think that we would need to have a clean copy of that to make sure that what we thought we had done is what we did and to go over that before we actually finally voted on. I am not prepared in an stretch of the imagination to vote on this tonight. I am speaking for myself but there is no way that I'm prepared to vote on it.

**Tift** I believe part of my job is to make sure that we keep this process going and get the ball as far down the court as possible.

**Beach** I understand that. And I understand that you would like to get this taken care of as quickly as possible and a lot of respects we would like to get taken care as quickly as possible but on the other hand we want to go to the council we can defend. And that's going to take some thought and some consideration and it's going to take some time. To me that's the long and short of it. Maybe the other four commissioners have a different view.

**Tift** with the understanding that were on the same page and we all want to keep this process moving forward can I impose upon each of you to give me a list of two or three things that you want ironed out sooner rather than later to get this process closed. I'm hearing one is you want a more specific articulation by us as to the tie between the lot and the condominium.

**Lind** Mr. Chair I'd ask the question of Mr. Mack and Mr. Kast. Mr. Mack is indicating he might have some thoughts. I would like to hear his thoughts.

**Mr. Mack** I just have some thoughts given the questions and the discussions. Without you taking a vote on this it sounds to me like there is concerns about number 1 whether the variance criteria truly apply at least on the part of one or more commissioners truly apply to the application. If I might say that this could get a little confusing cause they are references in ordinance in 2006 to variances. And the variance, as I understand that is proposed, is not that type of variance. It's the variance under the zoning code. Which has the criteria and I'm not sure you all have that zoning code provision in front of you. I have it here. But what I heard some concerns about that. And second, and I don't want the record to indicate the majority concerns, but I did hear some questions on that. And the second appears to be concerns about the tying in the condominium for a airplane storage to an individual lot. And frankly one thing I was going to look up before I got here and I forgot to was there, if my memory is correct there is something called a horizontal regimes something act which is the condominium act they may have renamed it, shows how old I am as a lawyer. I didn't

look at that to see if that applies and it's possible the applicant has and I haven't discussed that. Just sitting here my reaction is that there probably is a way to tie it together. But I can't think of an easy way to do it. The laws created to do things you want to do and there may very well be a way but I wouldn't be prepared to advise you tonight as to what way to do that if that is what you want before you send a recommendation either to approve or not to approve to the council. Now there may be other concerns that you have. Am I correct those are the two that whether that meets the variance criteria and then this condominium tie in, lease, or whatever within an individual lot. And they are really related issues because as I understand I have re-read the staff report on why a variance warranted. It really has to do with the topography of the lots and some public safety issues about unless you did it that way having planes on an incline and on roads that their sharing or streets that they are sharing with vehicles and pedestrians. Unless I am misunderstand and so those two issues that I just identified are kind of tied together. I am kinda there?

**Beach** I think that those are two important issues. There are a lot of small issues to that have to be addressed at one time or another. My view would be Mr. Tift has suggested that we some how communicate with him. I don't think that is wise for the commissioners to communicate with the applicant directly. I think that we should be doing the communication through the staff and the staff ought to be working out this. The staff has also heard and the staff has concluded, in this case, the town attorney as well as the town planner, town consulting planner. So I'm including all of them in this. That there the people to work through. You have heard us in a public forum to hear us in a private forum I don't think is a good idea. You did suggest us communicating with you in terms of providing you some kind of list or whatever. (Tift made remarks away from microphone). We do have an essentially a list of the things that we have talked about over time and there is a list that the planner has in terms of all the conditions that he's attached to it because it's not only our concerns but his concerns that we are going to have to address when we pass a resolution. There are quite a number of issues, I think he has seventeen conditions on there now. We may have other conditions or we may strip out some of his.

**Mr. Mack** I'm not sure how to do this. Would it be easier, aid your decision making if. I think your correct that the applicant or his consultants can deal with the town staff and exchange thoughts and they are free also to meet with other persons of interest. They are free to do that and try to hone some issues and get them dealt with and I could deal with the town staff and look at some of these other, possibility on my own, look at tie ins of the, I don't know what to call them, but the airplane storage, condominiums with the individual lots and also address this issue, in more detail, with Mr. Bond and Mr. Kast of the variance criteria and present and I don't want to commit people to work that they really don't want to do but before you meet next, before the evening that you meet possibly get you something in writing that would be part of the public record for anyone that signed in today who wanted to get it at town hall could obtain a copy. Sort of discussing some of these issues, maybe a menu of ways you could deal with it. Would that be helpful?

**Beach** I think so.

**Schaub** last time Nick took down some suggestions and incorporated them within. Like the utilities for the hanger areas, running those lines. But a young lady had mentioned tie downs that was mentioned last time, two weeks ago, but nothing has been mentioned about them.

Aviator Heights signage. There is nothing on the plan when your first driving into the area that says Aviator Heights and it's all decorated up and looks kind of cool. Fuel was mentioned at the last meeting we had but nothing was brought forward on it for these planes and the pilots that if there is going to be a fuel area where would it be. How would it be handled? The security drive behind the hangers was shown there in the last drawing but now it's been eliminated with those hangers moving right up into the banks so fire trucks, police cars cannot drive behind the hangers now. (Bond spoke away from microphone).

**Mack** what I hear council, Commission Schaub saying is that it would be helpful on those issues if they are not included to have some brief description why they haven't been rejected.

**Schaub** then the last one. It was discussed about hangers for being for airplanes only. But we have hangers out there at the airport that people put vehicles in. Mine has a motor home in it right now but it was built for a helicopter. Should you be restrictive to these people and say to these people, oh you can only have an airplane in that hanger when they really could use it for a storage unit? I mean 1,600 sq. feet would be an ideal storage unit for a person instead of running down to Malcolm's and renting one of these for \$100 a month that's only 6 feet wide.

**Mack** let me say also I'm going to anticipate maybe the applicant repeating it. That there is a time limit in the sub-division statute for review things. Although it is incumbent on us to meet it the statute is unclear what happens if you don't meet it but regardless of that. On the other hand I sense that what the commission doesn't want to do is pass on recommendation to the council when the commission itself with all of the issues and only to have the council possibly say we don't why the commission didn't deal with a, b and c and what are we suppose to do. I sense that.

**Beach** and we really haven't talked among ourselves. We have heard what each other have said about various things but we haven't talked among ourselves because we have never closed the hearing.

**Mack** you may wish to. It is possible you may wish to close the hearing except for supplemental submissions we have discussed now or you may just want to keep it open. There is a danger of course.

**Beach** we still need to finish up whatever the applicant has in terms of rebuttal and then we need to allow any opponents to comment on their rebuttals and then we need the town staff to sort of tie all this together as part of the hearing. Your right, we might want to leave it open for particular things while going on and discussing it.

**Mack** what I was going to suggest Mr. Chairman despite some of our wishes, all good things come to an end at a certain point, and if we were to follow this sort of process that I am suggesting and responding to some of your concerns and you did the rest of them at the next meeting it would seem to me that this could come to completion then at that meeting. I know you all have to discuss it and debate it but getting the perfect answer to question is. When I have opposed projects I have always suggested that the record remains open as long as possible for as many comments as people can get because it's not a bad way of tiring people out. There should be some closure. I think that we, I can't speak for Mr. Kask and

Mr. Bond on this, I think we have heard your. I think I will speak for them actually. I think I have heard your concerns and I think we have narrowed down the issues, at least the ones that you have questions about, and although the holidays are coming up and the timings probably bad. We all want to bring some closure so I think that we can address them. Is that possible, it's a few days before the next meeting so you have time to consider them. Does that work or do you want to do this a different way? If you want to disagree with me go ahead. O.k.

**Tift** the only other thing that we would have is that subject to this process that was just suggested by the chairman and the city attorney and of course we would agree to that subject to that can we go ahead and close the record tonight? That is a formal request on the part of the applicant. Just to try and keep this all moving along.

**Beach** we haven't finished the hearing either and it is all ready eleven minutes after ten and so how much longer are we going to go to clear out the hearing. We are getting close to clearing it out, clearly. But how long. . . maybe I should consult with my fellow commissioners at this point. We still have. . . let me ask Mr. Bond and Mr. Kast assuming we get through the applicant and we get through any other parties that want to say something and it is not yet midnight are you prepared to kind of take all these things into consideration and to make some kind of suggestions tonight as part of the hearing or would you want the hearing to remain open to take those after we finish with the public and the applicant tonight? (Applicant council spoke away from microphone). Your done, unless were not done with you. That may be the . . . well. (Mr. Kast spoke away from microphone). Well o.k. O.k. I think that we could perhaps try and do that. Do any of the commissioners have any questions of the applicant? Then we will go on to those who might wish to speak again in opposition or any other observation at this point on but try to restrict it to things that we have been talking about her recently and not go over issues that you've talked about before.

**Arlen Paranto**, 210 Orchard Avenue South, Eatonville, WA

I have heard all about these covenant and so on that have been discussed but I wondered if there has been any talk of a home owners association to assembly these covenants under the home owners association so that they would govern that and make sure that they are complied with. I think that is an important element.

**Brenden Pierce**, 425 Jet Court, Eatonville, WA

I heard some talk that if this variance does not go through there is no safe way to put hangers up in that area. I want to suggest that there is a safe way to put a hanger on every lot and not have any danger of children and that would . . . stepped away from microphone. .so there is a way to have every lot have a hanger and to have half acres and it is common in some of these air parks that if you do not live right on the runway that you have to tug your aircraft to your hanger. Thank you.

**Charles McTee**, Ridge Road, Eatonville, WA

I just wanted to talk about the use of the hangers. It's obvious to me that the hangers should have doors and that the homeowners should be able to use it to store motor home or a car or use it for storage. It's his hanger, there is no way that you could say it had to have a helicopter or a airplane in it. The other thing why you have to close the public hearing tonight your not going to approve it tonight are you?

**Beach** I don't imagine. No.

**McTee** then why can't we have a chance to comment on what you do next week? Or two weeks, whatever. I don't see why you have to close the public hearing.

**Beach** we do have to close it before we start our deliberations. We are not going to deliberate tonight.

**McTee** then I don't see the reason to close it.

**Beach** thank you.

**Lisa Benton**, 625 Eatonville Hwy West, Eatonville, WA

I just can't help but refer to the letter from Mart Kask to Mr. Beach, if believe. I have read the application and Nick's findings, conclusions and recommendations and conclude that the preliminary plat application for Aviator Heights is in conformance with the Town of Eatonville Ordinances and Operation Procedures. I believe that the Planning Commission should approve the preliminary plat. So if our commission can't rely upon the advise and council of our staff where are we at? To me it seems so very logical that we should be listening to those who have studies at great length and worked at great length with the applicants and take that into great consideration.

**Lind** is there any reason why we couldn't close the public hearing except for writ comments between now and the next meeting?

**Mack** no, I think that would be appropriate, I mean not appropriate but I mean it's proper, it's allowed. Now the danger is that if someone launches something in writing that no one has the chance, that is incorrect and no one has a chance to cross examine the person or rebut it that's the only problem I see.

**Lind** so the better advise is to just go ahead and close it then?

**Mack** I would say so although, frankly, I think that you maybe getting some, you are certainly going to get some stuff from staff. You may be getting a clarification from the PSRC. But the better course is to just close the public hearing.

**Beach** we can always re-open. . .

**Mack** you can re-open for good cause if someone feels that you need to look at something. (Someone spoke away from microphone). I think that's correct. People I mean, I'm not going to tell you there's a real hard line here. In writing if people want to submit stuff to elaborate on what they have said at the public hearing that is appropriate now. What you don't want are people raising whole new issues that no one has a chance to respond to. Your intelligent enough and we can decide which side of the line they fall on. So I would suggest that if you wish that you move to close the public hearing except for if people want to supplement simply on the issues they want to raise tonight with written materials they

could do that. But I would just close the public hearing and you can always re-open it if you have to.

**Lind** Mr. Chair are you ready for a motion?

**Beach** I think so.

**Lind** I would make a motion based upon what Mr. Mack has said that we close the public hearing except for those items that might refer further written clarification by someone on only matters that have been brought up. Does that reflect what you indicated Mr. Mack?

**Mack** generally if that is one way of doing it if people want to provide some written supplemental material but another way of doing it is to just to close the public hearing. If someone wants to add something in writing later they can request to do so.

**Lind** I think what I will do is I'll just . . . I move to close the public hearing. Let's make it simple.

**Schaub** I second.

**Beach** it has been moved and seconded to close the public hearing and so I understand that, to mean, that we will not accept, unless we re-open the public hearing, additional testimony.

**Lind** that is correct.

**Beach** that is the motion that we have.

**Mack** you are at the liberty to do that. That people can send in stuff and if you wish to re-open it to accept it you can do that later.

**Beach** so the motion is that we close the public hearing and so unless we re-open it we can not take any further public testimony on this.

**Mack** correct.

**Beach** does everyone understand what that?

**Valentine** what is the supplemental?

**Beach** he took that out.

**Valentine** I heard him still saying that.

**Beach** there is no supplemental here.

**Valentine** it's done it's closed?

**Beach** it's done, it's closed entirely by this motion. Unless we choose to re-open. But that will be a separate motion.

**Mack** Mr. Chair and members of the commission the records clear, I think, should be clear that you have given more than adequate time at two meetings on this subject. It is not as though your deterring or impeding public comment on the matter by closing at this point.

**Beach** we didn't close it after ten minutes on the first night?

**Mack** my recollection is it was a bit longer than that.

**Beach** is there any discussion of the motion? All those in favor say I. All said I. Those opposed. Motion carries that the public hearing is closed.

**New Business:**

**Beach** and so the next item on the agenda, if I can find my agenda, is that Mr. Bond had a couple of items under new business one of which he gave to us this matter of setting a public hearing for single family design standards and he wishes the hearing to be set for the 18<sup>th</sup> of December.

**Lind** so moved.

**Beach** is there a second?

**Schaub** second.

**Beach** any discussion? All those in favor say I. All said I.

**Beach** the second item that he has is to form a parks and trails committee and in anticipation of this I have asked Mr. Schaub to be on that committee and he has agreed to it. Do we need a motion?

**Bond** I don't believe so.

**Lind** I believe that under Roberts rule falls under the prevue of the chair assign and set up a subcommittee and you say that your doing that.

**Beach** then we shall let that go.

**Old Business:** None.

**Public Comments:** No comments.

**Commissioner Comments:** None

**Next Meeting:** December 4, 2006

**Beach** and we do have one thing besides finishing up on this that we need to do on December 4<sup>th</sup> and that is in our bi laws we elect the officers of the commission for 2007 in

the first meeting in December and so we need to do that and we will do that before we get on to this as I don't anticipate that taking very long. That should be quick.

**MSC to Adjourn at 10:30 PM**

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PC Chairman, Philip Beach

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PC Recorder, Karen T. Bennett

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PC Secretary, Bob Schaub

*Eatonville Planning Commission*

*PO Box 309 . 201 Center St. West*

*Eatonville, Washington 98328*

**January 3, 2007**