

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

STEPHEN PRUITT and STEVEN VAN CLEVE,)	Case No. 06-3-0016
)	
)	
Petitioners,)	(Pruitt)
)	
v.)	
)	
TOWN OF EATONVILLE,)	FINAL DECISION and ORDER
)	
Respondent.)	
)	

I. SYNOPSIS

Within the corporate limits of the Town of Eatonville is Swanson Field, a small utility airport, but which serves as a general aviation airport nonetheless. The Town’s Comprehensive Plan contains policies to protect the airport from encroachment of incompatible uses and structures that would pose dangers to aviation safety and the general public. In February 2006, the Town adopted development regulations governing Swanson Field. Ordinance 2006-6 adopted an Aerospace District that specified permitted uses, and an Airport Overlay District regulating height.

Petitioners challenged the Town’s action alleging that rather than discouraging incompatible uses adjacent to the airport, the Town encouraged incompatible uses. Petitioners also asserted that the Town’s adopted height restrictions governing structures in close proximity to the airport posed aviation safety dangers and were contrary to provisions of the Federal Aviation Administrations (FAA) regulations and Washington State Department of Transportation – Aviation Division’s (WSDOT) comments.

Petitioners, WSDOT – Aviation Division, and the FAA commented on the Town’s proposed development regulations, noting serious incompatibility and height encroachment concerns that endangered aviation and posed safety concerns to the general public. Petitioners noted the Town’s Plan specifically directed compliance with state and federal regulations. Nonetheless, the Town completely ignored the concerns voiced by Petitioners and the agencies charged with aviation safety and adopted the proposed regulations without amendment or revision.

*The Board found and concluded that the Town of Eatonville’s adoption of its general aviation development regulations was **clearly erroneous**. The adopted regulations were*

*internally inconsistent, did not comply with its own Plan policies and did not comply with RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547. Further, the Town's disregard for aviation safety, as expressed in Ordinance 2006-6, caused the Board to enter a **determination of invalidity**. The Ordinance adopting the development regulations pertaining to Swanson Field was remanded to the Town with direction to revise the regulations to achieve compliance with the Act. A compliance schedule was established.*

II. BACKGROUND

On March 23, 2006, Stephen Pruitt and Steven Van Cleve filed a Petition for Review (**PFR**) challenging the Town of Eatonville's adoption of Ordinance 2006-6 amending the Town's development regulations related to the Town of Eatonville Airport – Swanson Field. The Town had been working on such regulations for an extended period of time.

In April 2006, the Board held the prehearing conference and issued a prehearing order setting forth a schedule and the legal issues to be resolved by the Board. No motions were filed during the time authorized for motions.

In June 2006, the parties requested and were granted a 90-day settlement extension to provide time for them to resolve their dispute. The Board received one status report, indicating although two meetings had been held, the disagreement had not been resolved.

In October, the Board received timely briefing from the parties, as well as several motions. The briefing received is referenced in this Order as **Pruitt PHB, Town Response, and Pruitt Reply**.

On November 6, 2006, the Board held a HOM at the 20th floor conference room, 800 5th Avenue, Seattle, Washington. Board member Edward G. McGuire presided at the HOM. Board members David Earling and Margaret Pageler were present for the Board. Julie Taylor, Board Law Clerk, also attended. Petitioners Stephen Pruitt and Steven Van Cleve appeared *pro se*. Robert E. Mack and Edward G. Hudson represented Respondent Town of Eatonville. Eatonville Mayor Tom Smallwood and Mart Kask were also present. Court reporting services were provided by Eva Jankovits of Byers and Anderson Inc. The hearing convened at approximately 2:00 p.m. and adjourned at approximately 4:00 p.m. The Board ordered a transcript of the proceeding (**HOM Transcript**).

On November 13, 2006, the Board received the HOM Transcript.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the legislature directed the Boards to hear and determine whether the challenged actions were in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The

legislature directed that the Boards “after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA].” RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). See *Lewis County v. Western Washington Growth Management Hearings Board*, 139 P.3d 1096 (2006) (“The Growth Management Hearings Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations”).

Petitioners challenge Eatonville’s adoption of Ordinance No. 2006-6, amending its development regulations. Pursuant to RCW 36.70A.320(1), these Ordinances are presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the actions taken by the Town of Eatonville are not in compliance with the goals and requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action taken by [Eatonville] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” For the Board to find Eatonville’s actions clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to Eatonville in how it plans for growth, provided that its planning actions or policy choices are consistent with, and comply with, the goals and requirements of the GMA. The State Supreme Court’s most recent delineation of this required deference states: “We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county’s planning action is in fact a ‘clearly erroneous’ application of the GMA.” *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005).

The *Quadrant* decision is in accord with prior rulings that “Local discretion is bounded . . . by the goals and requirements of the GMA.” *King County v. Central Puget Sound Growth Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). As the Court of Appeals explained, “Consistent with *King County*, and notwithstanding the ‘deference’ language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not ‘consistent’ with the requirements and goals of the GMA.” *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3rd 1156 (2002); *Quadrant*, 154 Wn.2d 224, 240 (2005). And *see*, most recently, *Lewis County*, 139 P.3d at fn. 16: “[T]he

GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds.”

The scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION, PREFATORY NOTE and PRELIMINARY MATTERS

A. BOARD JURISDICTION

The Board finds that the Petitioners’ PFR was timely filed, pursuant to RCW 36.70A.290(2); Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, pursuant to RCW 36.70A.280(1)(a).

B. PREFATORY NOTE

The Challenged Action:

Ordinance 2006-6 established development regulations at and adjacent to the Eatonville Municipal Airport – Swanson Field.¹ These new regulations create an Aerospace district – Airport Overlay zone, which specifies certain uses, distances and imaginary vertical planes to protect airport operations. Generally, the permitted uses are airport-related uses as well as single-family residential, commercial and industrial, as permitted elsewhere in the Town’s code. The regulations also establish height limitations for structures in proximity to the airport’s runway. See discussion *infra* for specific relevant provisions of the Ordinance.

Board Discussion of Legal Issues:

The Board will discuss Legal Issues 1 and 2 together, and then address Legal Issues 3, 4 and 5.

C. PRELIMINARY MATTERS

Oral Rulings at the HOM:

At the HOM the Board heard argument on the Town’s Motions to Supplement the Record and Motion to Dismiss. The following oral rulings were made, and affirmed here.

¹ Swanson Field is a general aviation airport that is presently (2002) home to 22 single engine aircraft. The airport operations accommodate local (594), itinerant (2000), and military (15) traffic. Ex.74, WSDOT Aviation Division data on Swanson Field.

- Town Motion to Dismiss for failure to enumerate specific legal issues in Pruitt PHB – **Denied**.
- Town Motion to Supplement the Record
 - Item 73 – confirmation from the Washington State Department of Transportation (WSDOT) regarding a grant for developing an airport plan – **Admitted**.
 - Item 74 – WSDOT Aviation Division data from 2002 regarding airport activity at Eatonville Airport – **Admitted**.
 - Item 75 – News Tribute article regarding Spanaway Airport – **Denied**.

The Board also noted that the Town’s Index includes items produced after the 3/8/06 notice of publication of the challenged Ordinance. These items obviously were not before the Town Council at the time its decision was made. The Board’s review is of the record before the decision-makers. The Board will not strike the “post-decision” exhibits, but they will be accorded the limited weight they merit.²

Abandoned Issues:

The Board’s Rules of Practice and Procedure provide:

A petitioner . . . shall submit a brief on each legal issue it expects a board to determine. *Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.* Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

WAC 242-02-570(1), (emphasis supplied).

Additionally, the Board’s April 25, 2006 PHO in this matter states: “**Legal issues, or portions of legal issues, not briefed in the Prehearing Brief will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or in oral argument at the Hearing on the Merits.**” PHO, at 6 (emphasis in original). *See City of Bremerton, et al., v. Kitsap County*, CPSGMHB Consolidated Case No. 04-3-0009c, Final Decision and Order (Aug. 9, 2004), at 5; *and Tulalip Tribes of Washington v. Snohomish County*, CPSGMHB Case No. 96-3-0029, Final Decision and Order (Jan. 8, 1997), at 7.

Also, the Board has stated, “Inadequately briefed issues would be considered in a manner similar to consideration of unbriefed issues and, therefore, should be deemed abandoned.” *Sky Valley, et al., v. Snohomish County*, CPSGMHB Case No. 95-3-0068c, Order on Motions to Reconsider and Correct (Apr. 15, 1996), at 3.

² The Board notes that Item 71 is an excerpt from the Town’s Plan, a key document in this proceeding. The Board takes official notice of this item.

The PHO sets forth Legal Issue 4 as follows:

Legal Issue No. 4: Did the Town of Eatonville fail to comply with the review requirements as defined in RCW 36.70A.106 [by not transmitting these regulations to state agencies for review]?

Petitioners offer no argument anywhere in the prehearing brief on whether the City complied with the filing requirements of RCW 36.70A.106. *See* Pruitt PHB, at 1-10. Therefore, **the Board deems Legal Issue 4 as abandoned.**

IV. LEGAL ISSUES AND DISCUSSION

A. LEGAL ISSUE NO. 1 and LEGAL ISSUE NO. 2

The Board's PHO set forth Legal Issue No. 1:

Legal Issue No. 1: Do the adopted regulations fail to comply with the requirements of RCW 36.70A.130(1) to develop regulations that are consistent with the comprehensive plan?

The Board's PHO set forth Legal Issue No. 2:

Legal Issue No. 2: Do the adopted development regulations fail to comply with the requirements of RCW 36.70.547 [as per RCW 36.70A.510] to discourage the siting of incompatible land use near general aviation airports?

Applicable Law

The relevant provision of RCW 36.70A.130(1) states, "(d) Any amendment of or revision to development regulations *shall be consistent with and implement the comprehensive plan.*"

The relevant Town of Eatonville Plan Policies contested by Petitioners are the following:

- Under General Land Use Goal LU-1,³ the following policies:

- ...
- 7. Encourage the *protection of Swanson Airport from adjacent incompatible land uses and activities* that could impact the present and future operations of the airport. *Uses may include non-aviation residential, multifamily,*

³ LU-1 states: "To support and improve a rural small town, residential community comprised largely of single-family neighborhoods together with a central commercial area and a broad range of other support services and businesses which occur in identified commercial areas."

height hazards, and special uses such as schools, hospitals, and nursing homes and explosive/hazardous materials.

...

9. *Discourage the siting of uses adjacent to airports that attract birds, create visual hazards, or emit transmissions [that] would interfere with aviation communications and/or instrument landing systems, or otherwise obstruct or conflict with aircraft patterns, or result in potential hazards to aviation.*

10. *Encourage the adoption of development regulations that protect the airport from height hazards by developing a Height Overlay District [that] will prohibit buildings or structures from penetrating the Federal Aviation Regulations (FAR) Part 77 “Imaginary Surfaces.”*

(Emphasis supplied).

- Under Airport Lands Goal LU-5,⁴ the following policies:

...

2. *Protect the viability of the airport as a significant economic resource to the community and the State;*

3. *Enhance coordination and consistency between comprehensive plans, implementing regulations and airport plans; and*

4. *Reduce hazards that may endanger the lives of property and the public.*

...

6. *Encourage aviation related land uses, commercial and industrial development within the Aerospace zone.*

7. *Discourage all residential uses within 2,500 feet of the runway ends and limit the intensity of commercial, industrial or other land uses to five or less people per acre.*

(Emphasis supplied).

RCW 36.70A.510 states, “Adoption and amendment of comprehensive plan provisions and development regulations under this chapter affecting a general aviation airport are subject to RCW 36.70.547.”⁵

⁴ LU-5 states “Protect the airport from incompatible uses through provisions in the Comprehensive Plan and Development Regulations.”

⁵ It is undisputed that the Town of Eatonville’s airport, Swanson Field, is a general aviation airport subject to the provisions of RCW 36.70.547.

RCW 36.70.547 provides:

Every county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport. Such plans and regulations may only be adopted or amended after formal consultation with: Airport owners and managers, private airport operators, general aviation pilots, ports, and the aviation division of the department of transportation. All proposed and adopted plans and regulations shall be filed with the aviation division of the department of transportation within a reasonable time after release for public consideration and comment. Each county, city, and town may obtain technical assistance from the aviation division of the department of transportation to develop plans and regulations consistent with this section.

Any additions or amendments to comprehensive plans or development regulations required by this section may be adopted during the normal course of land use proceedings.

This section applies to every county, city, and town whether operating under chapter 35.63, 35A.63, 36.70, [or] 36.70A RCW, or under a charter.

(Emphasis supplied).

Board Discussion

Position of the Parties:

Petitioners' argument is quite straightforward. Ordinance No. 2006-6 does not discourage the siting of incompatible uses adjacent to Swanson Field since residential, commercial and industrial uses can all be located in the Aerospace District/Airport Overlay District and height restrictions do not protect the airport from height hazards because it allows structures to penetrate federally-established height limitations [Federal Aviation Regulations Part 77 (**FAR 77**)] adjacent to general aviation airports. By permitting these incompatible uses and allowing structural penetration of the height limitations, the Town has not reduced hazards associated with the airport and is endangering the lives and property of the public and airport users. These defects, Petitioners allege, do not comply with, or implement, the Town's Plan Policies and specific GMA requirements for general aviation airports. Pruitt PHB, at 1-7. Petitioners contend their position is supported by evidence submitted by the Washington State

Department of Transportation (**WSDOT**) Aviation Division and a corroborating e-mail from the Federal Aviation Administration (**FAA**). Index Exs. 54 and 58 [Petitioners' Exhibits A and B]

In response, the Town notes that it continues to work with the State in developing an airport plan for Swanson Field. In the meantime, the Town acknowledges that existing residences at the airport exceed FAR 77 height limits, and that if they were treated as “non-conforming uses, the owners would find it difficult to resell at market value or obtain fire and casualty insurance.” Town Response, at 4. Additionally, the Town contends that FAR 77 does not prohibit structures of a certain height. *Id.* at 7. Instead, FAR 77 sets up a system of notice, review and comment by the Administrator of the FAA. *Id.* If after review of proposed construction, the FAA considers the proposal to exceed FAA height standards, then, “the Town may choose to disallow the construction.” *Id.* at 8. However, the Town argues that residences that exceed the FAR 77 height limits would have to obtain a variance from the Town Board of Adjustment in order to exceed the FAA height limits. *Id.* The Town acknowledges that under its Comprehensive Plan, LU-1, Policy 10, the Town commits to adopting regulations to prohibit buildings that would penetrate the imaginary plane established in FAR 77, but the Town contends “Ordinance 2006-6 by its own terms is, and was not intended to be, not the final regulate [regulation] on this matter.” *Id.* at 7.

Eatonville claims that what the Petitioners want is to have “air park” residential development (residences with hangars attached) rather than having “non-aviation” residential development. *Id.* at 9. To the contrary, the “Town wants the community to utilize the airport in a safe way, and believes this can be done with some structures that exceed FAR Part 77 height limits.” *Id.* Additionally, the Town states “Some communities may find residential housing incompatible with the airports (sic), but this is not true in Eatonville where residential housing has been for years an acceptable adjacent use.” *Id.* at 10. The Town also contends that FAR 77 merely sets out a process for FAA to comment on development proposals around the airport; it does not contain standards or requirements that prohibit any type of use or set height limitations. HOM Transcript, at 48.

In reply, Petitioners first contend that Ordinance 2006-6 is a final regulation intended to implement the comprehensive plan; it is not an intermediary step as the Town contends. Pruitt Reply, at 7. Secondly, Petitioners assert that state and federal testimony and comment letters were ignored by the Town. *Id.* And third, since the Town has not defined incompatible uses, it cannot discourage such uses adjacent to Swanson Field – “the Town has never met a land use it doesn’t like.” *Id.* at 10

Board Analysis:

On its face, Ordinance 2006-6 is not an *interim* development regulation; it is a *final* regulation,⁶ to “[establish] development regulations at and adjacent to the Eatonville Airport – Swanson Field.” See Ordinance 2006-6, Title. As such, these development regulations must be consistent with, and implement, the Town’s Comprehensive Plan and comply with the GMA.

It is clear that the provisions of RCW 36.70A.510 and RCW 36.70.547 provide explicit statutory direction for local governments to give substantial weight to WSDOT Aviation Division’s comments and concerns related to matters affecting safety at general aviation airports. Eatonville “*shall . . . discourage the siting of incompatible uses adjacent to [Swanson Field].*” RCW 36.70.547. Likewise, the FAA’s expertise and decades of experience, as reflected in FAR Part 77, cannot be summarily ignored. Both these agencies have statutory authority to inject their substantial experience and expertise into local governmental matters involving airport safety.

The primary question for the Board is whether Eatonville’s development regulations, pertaining to Swanson Field, are consistent with, and implement, the Town’s Plan *and* are consistent with the GMA and related statutory requirements – *i.e.* RCW 36.70.547.

Ordinance 2006-6 Provisions – Incompatible Land Uses and Height Limitations:

The Town’s Aerospace District, which apparently coincides with the geographic area of the Airport Overlay District, permits residential, commercial and industrial uses, so long as they do not violate the Airport Overlay District provisions. See Ordinance 2006-6, at 2; Eatonville Municipal Code 18.04.185.A. 3, 4 and 5. The Airport Overlay identifies six specific Zones as displayed in Map B attached to Ordinance 2006-6. The following table from the Town’s regulations displays “Incompatible [and compatible] Land Uses.” Only Zones 1, 2 and 3, the relevant Airport Overlay Zones, are shown.

**Table 1
Incompatible Land Uses**

Airport Overlay Zones	Applicable Uses
Zone 1 - Runway Protection Zone [Extending 900’ from the end of the primary surface, which is 200’ beyond the end of the runway.]	1. Land uses which by their nature will be relatively unoccupied by people should be encouraged (mini-storage, small parking lots, etc.)

⁶ This is not to say the development regulations governing Swanson Field may not evolve and be improved as the Town proceeds with its Airport Plan, as funded and supported by WSDOT Aviation Division. See Ex. 73.

	<p>2. <u>Schools, hospitals, nursing homes, churches, day care centers, and mobile home parks are prohibited.</u></p>
<p>Zone 2 - Inner Safety Zone [<i>Extending 1,600' from the end of Zone 1.</i>]</p>	<p>1. <u>Schools and day care centers are prohibited.</u></p> <p>2. Outside the existing Eatonville UGA the average density of residential development will be one (1) dwelling unit per ten (10) acres on the property at the date of adoption of this ordinance.</p> <p>3. Inside the Eatonville UGA the average density of residential development will be a maximum of four (4) dwelling units per acre on the property at the date of adoption of this ordinance.*</p> <p>4. At the time surrounding development takes place, Weyerhaeuser Way South shall be built as a two-lane collector street with two twelve (12) foot travel lanes, separated by a ten (10) foot painted median and flanked by eight (8) foot paved shoulders, beginning at Center Street East and extending south for a distance of one thousand (1000) feet. The street section is constructed absent curb and gutter. Stormwater flows are managed by constructing low level grassy swales. The above specified roadway design and layout allows distressed aircraft to set down on this section of the street.</p>
<p>Zone 3 - Inner Turning Zone [<i>Fanning out at 60 degrees from each side of the centerline of the runway and extending 2,500' from the end of primary surface.</i>]</p>	<p>1. <u>School and day care centers are prohibited.</u></p>

Ordinance 2006-6, at 11-12; (emphasis supplied).

* The Board notes that this provisions would only apply to the *incorporated* portion of Eatonville's UGA since the City has no jurisdiction to establish densities in the unincorporated areas of Pierce County.

In short, the Town identifies schools and day care centers as *incompatible* and *prohibited* uses in Zones 1, 2 and 3. Additionally, hospitals, nursing homes, churches and mobile home parks are *prohibited*, *i.e.* incompatible, in Zone 1. However, residential development [apparently up to 4 du/acre within the UGA], commercial, and industrial use are all permitted, *i.e.* compatible, in Zones 1, 2 and 3. Even though these uses are permitted, height limitations as provided in the Ordinance, still apply. *See* Ordinance 2006, at 10 and 7-9. So how do the height restrictions limit these uses?

The Ordinance establishes five Height Restriction Zones. It appears to the Board that the primary focus of Petitioners' challenge to the height limitations is with the "Transitional Zone." The Ordinance defines the Transitional Zone as,

Beginning at the center of the paved runway and at the same elevation as the paved runway, extending outward at ninety (90) degrees to the center of the runway, for one hundred and twenty five (125) feet and rising to a vertical height of twenty eight (28) feet, then extending further outward at a *defined slope of five (5) feet outward for each one (1) foot upward until it meets the horizontal surface which is one hundred fifty (150) feet above the airport elevation of eight hundred forty three (843) feet, or nine hundred ninety three (993) feet above sea level.* HEIGHT RESTRICTIONS: No object shall penetrate the imaginary line created by a slope of seven (5) feet [inconsistency in original text] outward for each one (1) foot upward.

Ordinance No. 2006-6, at 8, (emphasis supplied). Thus, at 125 feet, and perpendicular, from the centerline of the runway, a structure (apparently only residential structures⁷) could be 28 feet high (*i.e.* a 4.46:1 slope). Beyond that point, one foot of height could be added for each five feet of horizontal measurement (*i.e.* a 5:1 slope). Thus, at 175 feet from the runway centerline, a structure could be as high as 38 feet. The Board finds that this section of the height regulation is internally inconsistent and contradictory since the text indicates a 4.46: 1 slope for the first 125 feet from the runway centerline, followed by a 5:1 slope extending beyond that point. However, the "HEIGHT RESTRICTIONS" indicate either a 7:1 or 5:1 restriction from the centerline outward!

Consistency with, and implementation of, the Plan Policies and compliance with RCW 36.70A.510 and RCW 36.70.547:

The Comprehensive Plan Policies cited by Petitioners clearly articulate and adhere to the explicit requirement provided by RCW 36.70A.510 and RCW 36.70.547 to discourage the siting of incompatible uses at and adjacent to a general aviation airport. *See* LU-1 Policies 7, 9 and 10; and LU-5 Policies 2, 3, 4, 6 and 7. Additionally, LU-1 Policy 10 clearly commits the Town to protecting the airport from height hazards by developing a

⁷ At another section of the Town's regulations, this 28-foot height limit is only applied to residential structures, while the height limit for *commercial* structures is set at 38 feet. *See* Ordinance 2006-6, at 3.

Height Overlay District [that] *will prohibit buildings or structures from penetrating the “Imaginary Surfaces” established in FAR Part 77.* But, do the Town’s identified incompatible uses and height restrictions implement these Town Plan Policies, and do they comply with the relevant statutory provisions? The Board’s answer is **NO**.

In support of their assertions, Petitioners, at least one of whom is a general aviation pilot, rely heavily on the comments made by WSDOT Aviation Division and FAA. RCW 36.70.547, via RCW 36.70A.510, is explicit in its requirement that the Town consult with WSDOT Aviation Division regarding the identification and discouragement of incompatible uses. It is undisputed that the Town provided a draft of its development regulations for Swanson Field to the WSDOT Aviation Division. While the Aviation Division’s comments supported the Town’s use of an Airport Overlay Zone, WSDOT noted that the regulations “fail to protect some of the most critical areas adjacent to the airport and provide a safe environment for aviation users and the general public.” Ex. 54, at 1. The WSDOT Aviation Division’s comments continue:

[T]he regulations fail to protect some of the most critical locations adjacent to the airport in accordance with best management practices. According to historical aircraft accident data from the National Transportation Safety Board (NTSB), Zones 1 and 2, as well as areas adjacent to the airport runway within the Aerospace District, have the highest potential for aircraft accidents. Zone 3 also has a high potential for aircraft accidents, especially in the right-hand turning radius, which is the typical traffic pattern for this airport [*Swanson Field*]. These areas also have high aircraft noise levels. Residential and other noise sensitive uses are considered incompatible when located in these zones and have the highest potential to disrupt the long term viability of an airport.

Our comments and recommendations to correct these deficiencies are as follows:

1. The proposed development regulations would permit residential development within Zone 1. These areas are located at the runway ends and are also known as the Runway Protection Zone or RPZ.
Recommendation: *Prohibit residential development and high intensity non residential development in Zone 1.*
2. Most of Zones 2 and 3 south of the airport’s runway are located within a proposed high-density mixed-use residential district. This area is largely undeveloped with large ownership patterns. The proposed street set-aside within the extended runway centerline is a good first step to improving airport safety; however, residential density plays a significant role in land use compatibility. Additionally, residential density should be decreased within the right turning radius of Zone 3, due to the typical airport traffic

pattern. Residential clustering provisions may be an alternative approach.

Recommendation: *Zone 2 should be reserved for commercial or industrial uses. Residential uses in Zone 2 should be allowed only as a last resort, and only if clustering.*

3. The Aerospace District as well as the Airport Overlay District fails to provide adequate setbacks from the airport runway centerline. The proposed setback is less than the setback required in the previous code with a minimum lot size of one-half acre and 100 foot lot widths. Currently, the Aerospace District is largely undeveloped. There are approximately 9 residential structures presently located within 125 feet of the airport runway centerline. However, at full development, the number of residential dwellings just along the airport runway could increase from 9 dwelling units to as many as 40 or 50 dwellings.

According to the NTSB aircraft accident data, areas located parallel to the airport runway have the highest incidence of aircraft accidents. Structures this close to the runway would also penetrate the Federal Aviation Administration [*sic* Regulations] (FAR) Part 77 airspace surfaces at a higher degree than if the setback was lengthened, and structures placed further [*sic* farther] from the airport runway and primary surface. Height hazards are one of the leading causes of aircraft accidents nationally.

Two other residential airparks in the state, Crest Air Park and Desert Aire, have setbacks from the centerline of the runway of 225 feet and 215 feet, respectfully [*sic* respectively]. This is 90 to 100 feet greater than [*sic* than] the proposed regulations.

Additionally, the current Aerospace District has many elements that create unnecessary confusion and directly conflict with the airport overlay. These include setback provisions and intensity requirements within the runway approach and departure area (Zone 1).

Recommendation: *Setbacks from the airport runway should be increased to promote airport safety and limit penetration of FAR Part 77. Non-aviation residential development should be limited as much as possible, especially along the airport runway. The Aerospace District should be reviewed and amended.*

4. The height hazard standards within the proposed regulations are flawed and, if implemented, would disrupt airport operations,

compromise public health and endanger pilots and the general public. Height hazards are one of the leading causes of aircraft accidents. The height standards described in the proposed code do not conform to federal regulations and would increase allowed structure heights above the FAR Part 77 airspace surfaces. The attempt to define new standards for the surfaces creates confusion with federal regulations and promotes an unsafe environment for people on the ground and in the air.

Recommendation: *Use the Federal Aviation Regulations (FAR) Part 77 standards to define airspace. These regulations are supported by years of research and analysis and have been used nationally for all public use airports for over 50 years.*

5. The proposed regulations incorrectly reference FAR Part 77 notice requirement application form 7460-1. It is the individual developer's responsibility to submit this application form to the FAA if the proposed development triggers the application criteria. These criteria [in the Town's regulations] are different than whether or not the proposed development may penetrate FAR Part 77.

Recommendation: *Amend the regulations to correctly reference the application form 7460-1. A statement should also be inserted into the regulations noting that the development regulations do not waive the developer's responsibility to submit proper applications to the FAA.*

If allowed in areas adjacent to the airport, increased residential density and increased encroachment of navigable airspace will make it increasingly difficult for Swanson Field to operate. The challenge for local leaders becomes choosing the right type of development that allows for the protection of the airport to meet current and future demands for transportation. *Taking appropriate steps to address incompatible land use activities during the lifetime of the airport can decrease the consequences and severity to the public health and protect the airport as an essential public facility. . . .*

Ex. 54, at 2-4, (emphasis supplied).

The FAA strongly concurred with the WSDOT Aviation Division's concerns. The FAA stated:

We would like to take this opportunity to let you know that the Federal Aviation Administration *fully supports* the attached letter from the

Washington State Department of Transportation. *We are seriously concerned that the City of Eatonville is not taking the appropriate steps to address incompatible land use proposals and are ignoring federal regulations.*

The height hazard standards within the proposed regulations, in particular, are flawed and, if implemented, would disrupt airport operations, compromise public health and endanger pilots and the general public. . . . Federal Aviation Regulation Part 77 is not something that can be arbitrarily modified to match a particular development proposal. FAR Part 77 has been in existence for over 50 years . . . and it should be recognized accordingly. The Federal Regulations and State Planning guidelines have been written to take into consideration different sizes and types of airports. We therefore recommend that your development regulations be modified to adopt FAR Part 77 in its entirety.

Ex. 58, at 1, (emphasis supplied).

These agencies, with expertise in aviation safety and defining airspace, had the opportunity to review the Town's proposed development regulations. They provided specific comments noting flaws, which related to height limitations and incompatible uses and offered recommendations to correct the noted deficiencies. The agencies' comment letters detailed serious conflicts that, if uncorrected, would endanger those using Swanson Field and the general public. These comment letters were available to the Town Council prior to its taking action on the development regulations; yet no changes were made to address the serious safety concerns raised by the state and federal agencies charged with aviation safety. Nor did the Town pay any heed to its own Plan Policies. Without any technical aviation safety support in its record, the Town simply adopted the proposed regulations without further revision or amendment. *See* HOM Transcript, at 60-61. It appears to the Board that the Town completely ignored the concerns of general aviation pilots (Petitioners), the FAA and WSDOT Aviation Division, the very federal and state agencies charged with aviation safety at general aviation airports, and the groups the town was required to engage in "formal consultations" with per RCW 36.70.547.

At the HOM, Petitioners offered an illustrative demonstration, without objection of the Town, to illustrate FAR Part 77's height restrictions in the Transitional Zone extending perpendicular to the runway. In essence, the imaginary surface for the Transitional Zone, as set forth in FAR 77.25(e), requires a slope of 7:1 – seven feet outward for each foot upward. Thus, at 125' from the centerline of the runway, penetration of the imaginary surface (obstruction) would occur at approximately 18 feet in height. The Town's regulations allow a 28 foot structure. Under FAR Part 77's imaginary surface regulations, a structure would have to be almost 200' from the runway centerline to achieve a height of 28 feet and almost 270' for a 38-foot high structure.

It is clear that the Town's height restrictions are contrary to, and conflict with, FAR Part 77 height provisions. Nor are the Town's regulations consistent with, nor do they implement, the Town's Comprehensive Plan Policies – LU-1 Policies 7, 9 and 10; and LU-5 Policies 2, 3, 4, 6 and 7. Allowing structures to penetrate the height limits established by the imaginary surfaces creates a potential obstruction hindering airport operations. Therefore, the Town has not complied with the provisions of RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547.

Likewise, the limited definition of incompatible uses in the Town's regulations is contrary to the Town's own Plan Policies and contrary to WSDOT Aviation Division and FAA comments on incompatible uses. Allowing extensive incompatible uses to continue developing adjacent to Swanson Field is also contrary to the Town's own Plan Policies and the provisions of RCW 36.70.547. The Town acknowledges that it authorized the continuation of incompatible uses in its Ordinance.

This chapter is adopted pursuant to RCW 36.70A.547 and 36.70A.200 which requires a county, city or town to enact development regulations, to discourage the siting of incompatible land uses adjacent to general aviation airports.

The incompatible land use regulations presented in this Chapter differ from the Federal Aviation Administration FAR 77 height regulations and the State of Washington Department of Transportation Aviation Division, suggested planning guidelines regulating land uses adjacent to general aviation airports. This departure, however insignificant, is necessitated by the fact that the Eatonville Airport (Swanson Field) was built and later expanded before the incompatible land use regulations adjacent to the general aviation airports came into existence. Residential development was permitted close to the airport runway and other developments, such as schools, were permitted to be built adjacent to the airport property. At the time, these developments were considered to coexist safely with the airport operations. Today, the view at the Federal and State level has changed. Many of the early permitted developments are now being judged unsafe by the Federal and State agencies. However, the Town of Eatonville had the obligation to accommodate the Federal and State desires and the rights of property owners at and near the airport. This chapter attempts to find a compromise that recognizes the Federal regulations and State planning guidelines and protects the rights and values of property owners at and around the airport. By adopting this chapter, the airport is more safe than having done nothing.

Ordinance 2006-6, at 4; (emphasis supplied).

Again, the Board finds that the Town's development regulations for Swanson Field do not discourage the siting of incompatible land uses at or adjacent to the airport thereby

hindering airport operations. These discrepancies are far from insignificant. Allowing new development, especially residential development at, and adjacent to, Swanson Field is not consistent with, nor does it implement, the Town's Comprehensive Plan Policies – LU-1 Policies 7, 9 and 10; and LU-5 Policies 2, 3, 4, 6 and 7. Allowing incompatible uses at and adjacent to this general aviation airport creates serious safety hazards to airport users and the general public and hinders airport operations contrary to statute. Therefore, Ordinance 2006-6 fails to comply with RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547.

The Town seems extremely concerned with protecting the rights and property values of the few residents that own structures that would not comply with the height restrictions or whose uses (primarily residential⁸) are deemed incompatible by the FAA and WSDOT Aviation Division criteria. The Town is resistant to making these uses nonconforming. *See* Town Response, at 4 and 10; Ordinance 2006-6, at 4; and HOM Transcript, at 34-37. However, in its zeal to protect these few property owners, the Town overlooks the fact that Ordinance 2006-6 not only permits existing uses to continue, but also allows new construction and development within the airspace of concern to FAA and to WSDOT. The Town's approach does more than permit existing "nonconforming" uses to continue, it *perpetuates* incompatibility and *exacerbates* the very serious safety concerns raised by WSDOT and FAA. Instead of discouraging incompatible uses at and adjacent to Swanson Field, the Town's adoption of Ordinance 2006-6 is actually encouraging the development of future incompatible uses. This is directly contrary to the Town's own Plan Policies and the direction of RCW 36.70.547.

The "Variance" Process:

As noted by Petitioners, WSDOT Aviation Division and the FAA, the Town's "variance procedures" appear contradictory and confusing. The Town's regulations suggest that a person pursuing a proposal that would not comply with the requirements of the Town's Aerospace District or Airport Overlay District may apply to the Town's Board of Adjustment for a variance from these regulations. The application for a variance must be reviewed by the FAA and a determination made [by the FAA] "as to the effect of the proposal on the operation of air navigation facilities and the safe and efficient use of navigable airspace." *See* Ordinance 2006-6, at 14. Nonetheless, the Town may grant a variance, regardless of the FAA's determination, if unnecessary hardship is found by the Board of Adjustment. *Id.*

As noted previously, the Town's Height Restrictions are already different than those provided in FAR Part 77. Yet the Town's variance process would seem to suggest additional relief would be available for "hardship." Also, as the Board understands the concerns of Petitioners, the FAA and the WSDOT Aviation Division, *the FAA review is*

⁸ Apparently, there are presently between 6 to 10 home owners whose residences might be deemed nonconforming if the WSDOT and the FAA provisions were enacted by the Town.

based upon FAR Part 77, *not what the Town has adopted*. Nonetheless, this provision is ambiguous and unclear.

Additionally, Ordinance 2006-6 also provides that no penetration of the Town's height restrictions can occur without a variance approved by the Board of Adjustment; and that once such variance is received by the applicant, *then* the FAA must be notified. *See* Ordinance 2006-6, at 3. This provision is directly contradictory to the variance provisions noted *supra*, indicating that the FAA review occurs *prior* to considering a variance. These two "variance" provisions are contradictory, ambiguous and unclear.

Conclusion Legal Issues 1 and 2

The Town of Eatonville's adoption of Ordinance 2006-6 establishing development regulations for Swanson Field does not discourage the siting of incompatible land uses at or adjacent to the airport thereby hindering airport operations. Further, these development regulations are not in accord with FAR Part 77 height provisions. Additionally, the variance procedures are contradictory and confusing. These deficiencies and flaws are far from insignificant. The Town's action in this matter was **clearly erroneous**. Ordinance 2006-6's provisions, pertaining to height restrictions and allowing new development, especially residential development, at and adjacent to Swanson Field, is **not consistent with, and does not implement**, the Town's Comprehensive Plan Policies – LU-1 Policies 7, 9 and 10; and LU-5 Policies 2, 3, 4, 6 and 7. Allowing incompatible uses and heights at and adjacent to this general aviation airport creates serious safety hazards to airport users and the general public and hinders airport operations. Therefore, Ordinance 2006-6 **fails to comply** with RCW 36.70A.130(1), RCW 36.70A.510 and RCW 36.70.547.

B. LEGAL ISSUE NO. 3

The Board's PHO set forth Legal Issue No. 3:

Legal Issue No. 3: Did the Town of Eatonville fail to comply with the requirements of RCW 36.70A.100 to coordinate their development regulations with Pierce County on this regional issue?

Applicable Law

RCW 36.70A.100 provides:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

Discussion

Position of the Parties:

Petitioners assert that the Town has not coordinated the adoption of its development regulations for Swanson Field with Pierce County. To support this contention, Pruitt refers to Ex. C, which expresses the County's concern and objection to the proposed zoning for unincorporated Pierce County in the vicinity of the Eatonville Airport. Pruitt PHB, at 6, and Ex. C.

In response, the Town argues that "Ordinance 2006-6 does not have any application to land use development in unincorporated Pierce County. . ." Town Response, at 10. Additionally, the Town argues that RCW 36.70A.100 requires coordination and consistency among the comprehensive plans of adjacent jurisdictions, and the challenged Ordinance does not alter the Town's comprehensive plan. *Id.* at 11.

In reply, Petitioners state, "Petitioners are willing to remove this item as a separate issue, but argue that the substance of the original issue is extremely relevant to issue no. 1." Pruitt Reply, at 11.

Board Analysis:

The Town is correct in its characterization of the requirements of RCW 36.70A.100. This section of the Act requires coordination and consistency between the comprehensive plans of Pierce County and the Town of Eatonville. Here, the challenged action – Ordinance No. 2006-6 – adopts development regulations. As Petitioners acknowledge, RCW 36.70A.100 is not applicable as stated in this Legal Issue. Legal Issue No. 3 is dismissed with prejudice.

Conclusion Legal Issue 3

RCW 36.70A.100 is not applicable in the challenge to the Town's adoption of Ordinance 2006-6. Legal Issue No. 3 is **dismissed with prejudice**.

C. LEGAL ISSUE NO. 4

The Board's PHO set forth Legal Issue No. 4:

Legal Issue No. 4: Did the Town of Eatonville fail to comply with the review requirements as defined in RCW 36.70A.106 [by not transmitting these regulations to state agencies for review]?

Conclusion Legal Issue 4

Legal Issue 4 was deemed **abandoned**. See Preliminary Matters, *supra*.

D. LEGAL ISSUE NO. 5 [Invalidity]

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. The Board may consider the necessity of a determination of invalidity *sua sponte*. See *King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Nevertheless, here Petitioners have framed the request for invalidity as a Legal Issue:

Legal Issue No. 5: Do these failures substantially interfere with the goals of the GMA [specifically, goals (3) Transportation, (5) Economic development, and (12) Public facilities and services] warranting a determination of invalidity under RCW 36.70A.302?

Applicable Law

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
 - (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
 - (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
 - (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.
- (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or City. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

Findings of Fact and Conclusions of Law

In its discussion of Legal Issue 1 and 2, *supra*, the Board found and concluded that: the Town of Eatonville's development regulations for Swanson Field, as adopted by Ordinance 2006-6, **did not implement**, and **were not consistent with** the Town's Comprehensive Plan Policies as required by RCW 36.70A.130(1); and that these development regulations **did not comply** with the requirements of RCW 36.70A.520 and RCW 36.70.547 to discourage the siting of incompatible uses near general aviation airports. On these Legal Issues, the Board found noncompliance. The Board is also **remanding** Ordinance 2006-6 with direction to the Town to take legislative action to revise their development regulations to comply with the requirements of the GMA.

In light of these defects, discrepancies, ambiguities, flaws and inconsistencies discussed in Legal Issues 1 and 2, *supra*, and the potential endangerment posed to not only those using the Eatonville general aviation airport, but to the safety of the general public as well, the Board concludes that the continued validity of Ordinance 2006-6 substantially interferes with the fulfillment of Goal 3 – RCW 36.70A.020(3).⁹ Ordinance 2006-6 does not encourage an efficient multimodal transportation system that is based on regional [state and federal] priorities and coordinated with county and city comprehensive plans. Additionally, the Board concludes that the continued validity of Ordinance 2006-6 substantially interferes with Goal 11's direction to ensure coordination between communities and jurisdictions to reconcile conflicts – RCW 36.70A.020(11).¹⁰ The Town's actions clearly conflict with state and federal priorities. Therefore, the Board enters a **determination of invalidity** with respect to Ordinance 2006-6 in its entirety.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The Town of Eatonville's adoption of Ordinance 2006-6, establishing development regulations for Swanson Field, a general aviation airport, was **clearly erroneous**.
2. Ordinance 2006-6 **does not comply** with the requirements of RCW 36.70A.130(1), since the adopted development regulations for Swanson Field do not implement GMA-compliant Policies in the Town's Comprehensive Plan.
3. Ordinance 2006-6 **does not comply** with the requirements of RCW 36.70A.510 and RCW 36.70.547 requiring the Town of Eatonville to

⁹ Goal 3: Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans. RCW 36.70A.020(3).

¹⁰ Goal 11: Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

discourage the siting of incompatible uses near its general aviation airport – Swanson Field.

4. Additionally, the Board has found that the continued validity of Ordinance 2006-6 will potentially endanger those persons using the Eatonville general aviation airport and endanger the safety of the general public near this facility. The Board has determined that Ordinance 2006-6 substantially interferes with the fulfillment of Goals 3 and 11 – RCW 36.70A.020(3) and (11). Therefore the Board has entered a **determination of invalidity** with respect to the entirety of Ordinance 2006-6.
5. The Board **remands** Ordinance 2006-6 to the Town of Eatonville with direction to take the necessary legislative actions to adopt development regulations for Swanson Field that are consistent with, and implement, its compliant Plan Policies, per RCW 36.70A.130(1), and comply with the requirements of RCW 36.70A.510 and RCW 36.70.547, as set forth and interpreted in this Order.
 - The Board establishes **March 16, 2007**, as the deadline for the Town of Eatonville to take appropriate legislative action to comply with the GMA as interpreted and set forth in this Order.
 - By no later than **March 23, 2007**, the Town of Eatonville shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with the GMA and this Order (**Statement of Actions Taken to Comply - SATC**). The Town shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioners. By this same date, the City shall also file a “**Compliance Index**,” listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
 - By no later than **March 30, 2007**,¹¹ the Petitioners may file with the Board an original and four copies of Response to the Town’s SATC. Petitioners shall simultaneously serve a copy of their Response to the Town’s SATC on the Town.
 - Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. April 12, 2007**, at the Board’s offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the Town of Eatonville takes the required legislative action prior to the **March 16, 2007**, deadline set forth in this Order, the Town may file a motion with the Board requesting an adjustment to this compliance schedule.

¹¹ **March 30, 2007** is also the deadline for a person to file a request to participate as a “participant” in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the Town’s remand actions comply with the Legal Issues addressed and remanded in this FDO.

So ORDERED this 18th day of December, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.¹²

¹² Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX A

Procedural Background

A. General

On March 23, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Stephen Pruitt and Steven Van Cleve (**Petitioners** or **Pruitt**). The matter was assigned Case No. 06-3-0016. Board member Margaret A. Pageler was initially assigned the role of Presiding Officer (**PO**) in this matter.¹³ Petitioners challenge the Town of Eatonville's (**Respondent, Town** or **Eatonville**) adoption of Ordinance No. 2006-6 (**Ordinance**). The Ordinance *amends* the Town's development regulations pertaining to the area at or adjacent to the Eatonville Airport – Swanson Field. The grounds for the challenge are noncompliance with several sections of the Growth Management Act (**GMA** or **Act**).

On March 27, 2006, the Board issued a "Notice of Hearing"; on April 24, 2006, the Board held the PHC; and on April 25, 2006 the Board issued a "Prehearing Order" (**PHO**) setting the schedule and Legal Issues for this case.

On June 29, 2006, pursuant to a request for a settlement extension, the Board issued an "Order Granting Settlement Extension and Amending Case Schedule."

On September 28, 2006, the Board received a "Settlement Status Report." The Board received no further requests for settlement extensions.

B. Motions to Supplement the Record and Amend the Index

On April 24, 2006, the Board received the Town of Eatonville's "Index to Record" (**Index**), listing 72 items.

The Board's PHO set forth the schedule for filing Motions to Supplement the Record.

During the scheduled motions practice, the Board did not receive any Motions to Supplement the Record. The Settlement Extension was granted after the motions schedule had lapsed. However, there was a Motion to Supplement the Record filed with the Town's Response brief. This motion is addressed in this Order under Preliminary Matters.

C. Dispositive Motions

The Board's PHO set forth the schedule for filing Dispositive Motions.

¹³ Prior to the Hearing on the Merits, Board member Edward G. McGuire assumed the role of PO in this proceeding.

During the scheduled motions practice, the Board did not receive any Dispositive Motions. The Settlement Extension was granted after the motions schedule had lapsed. However, there was a Motion to Dismiss filed with the Town's Response brief. This motion is addressed in this Order under Preliminary Matters.

D. Briefing¹⁴ and Hearing on the Merits

On October 10, 2006, the Board received Petitioners' "Prehearing Brief," with three attached exhibits [A, B & C]. (**Pruitt PHB**).

On October 24, 2006, the Board received the Town of Eatonville's "Respondent's Prehearing Brief," eight attached exhibits [three exhibits were not included in the Index] (**Town Response**). Accompanying the Town Response were: 1) Motion to Supplement Record, asking that three exhibits be added to the record (**Town Motion – Supp**); 2) Motion for Leave to File a Motion to Dismiss Petition; and 3) Motion to Dismiss (**Town Motion – Dismiss**). That same day the Board notified the parties via e-mail that the Board would entertain argument at the Hearing on the Merits (**HOM**) on both motions. Also, the Board received Petitioners' "Response to Motion to Dismiss" (**Pruitt Response – Dismiss**).

On October 30, 2006, the Board received Petitioners Pruitt and Van Cleve's "Petitioners' Reply Brief;" no exhibits were attached (**Pruitt Reply**).

On November 6, 2006, the Board held an HOM at the 20th floor conference room, 800 5th Avenue, Seattle, Washington. Board member Edward G. McGuire presided at the HOM. Board members David Earling and Margaret Pageler were present for the Board. Julie Taylor, Board Law Clerk also attended. Petitioners Stephen Pruitt and Steven Van Cleve appeared *pro se*. Robert E. Mack and Edward G. Hudson represented Respondent Town of Eatonville. Eatonville Mayor Tom Smallwood and Mart Kask were also present. Court reporting services were provided by Eva Jankovits of Byers and Anderson Inc. The hearing convened at approximately 2:00 p.m. and adjourned at approximately 4:00 p.m. The Board ordered a transcript of the proceeding (**HOM Transcript**).

On November 13, 2006, the Board received the HOM Transcript.

¹⁴ All electronic briefing was timely filed; the dates noted *infra* indicate the date the Board received hard copy of the briefing.