

Town of Eatonville
PLANNING COMMISSION MEETING
MONDAY 7:00 PM, FEBRUARY 4, 2008
COMMUNITY CENTER
305 CENTER STREET WEST

Chairman Schaub called the meeting to order at 7:19PM .

Commissioners Present: Schaub, Beach, Frink, Harris, Lambert and Treyz.
Commissioner Fitzer has an excused absence.

Town Staff Present: Mayor Smallwood, Nick Bond, Ed Hudson and Karen Bennett.

Approval of agenda: Beach moves for approval. Frink seconds. Agenda approved with unanimous consent.

Approval of minutes: Beach moves to approve the minutes of January 22, 2008, Harris seconds. January 22, 2008 minutes approved unanimously w/corrections.

Communications and Announcements:

From Commissioners, Town Officials, other government bodies:

Beach would like the Mayor to request a legal memorandum regarding the Planning Commission as a Board of Adjustment against having a Hearing Officer and explore the legal ramifications of going either way.

Ed Hudson in the sense of drawing your attention to the pressures, sometimes I feel with the regards to the budget. I want to say that there is probably reams of material on this issue that my first thought would be to request it from the Association of City's for the background as opposed to my just looking at a technical issue of how that would change.

Beach let me pose a specific question. What is the liability of the Commissioners acting as a Board of Adjustment?

Hudson you could have some liability, I suppose if collectively you willfully violated your charge, whatever that might be on a given situation. I don't see that as something that is likely to ever occur.

Beach I was informed by someone who I would consider, perhaps, knowledgeable on the subject who said that individually we were liable for our decisions as a Board of Adjustment and I don't know if that is a fact of law and I would like to have an answer to that question. Are we individually liable acting as a Board of Adjustment?

Hudson again, in the extreme I guess the answer is "yes". If as a Board of Adjustment you are aware that as a majority of you your taking an action that is contrary to the law, blatantly, you refuse to abide by new state law that come down for whatever reason, then I think you might be held personally accountable for a decision that would have a private impact that

would result in damages. I am not aware, off the top of my head, of any cases that have come up on that. It's a breeding ground for selling insurance.

Beach I don't know if this is a real problem or not. It's basically what I want to find out is whether it is or not. I don't know.

Hudson I would look to the Association of Washington City's to find out if they had that issue come up and the pro's and con's and then we could go from there. Normally the things that you see are usually more expense but what you get with it usually is a lot better history maintained of the decisions that are made so that over a period of time there is actually sort of a case law that develops on how things go. Those are one of the benefits of it. It certainly removes the appearance of fairness issues out of the picture. The point that you are making, again, there is so much out there that has been done on this for years since it started coming up about forty years ago that I would start there and lets see what they have without paying my time to try to resurrect something here.

From the Public: There was none.

Public Hearings: Impact Fees Appeal – Board of Adjustments

Schaub swearing in of witness. Ask commissions if they have had any communications with others regarding the Impact Fees Appeal. Paul Treyz excuses himself from any vote on Mr. Litzenberger because he is employed by the school district.

Rowland Litzenberger, 43707 18th Avenue East, Eatonville, WA 98328

For the record Mr. Treyz has excused himself and it has been written in other locations that this an appeal of the school impact fee. I would encourage you to read the letter that I wrote in my appeal that addresses impact fees. I'm referring to several impact fees not just school impact fees. As we go through this tonight, we are going to talk about impact fees in general and if you bear with me. If you don't mind if I read this for the record, pursuant to EMC code I here by submit my filing fee of \$350.00 and do here by request a hearing with the Town of Eatonville Board of Adjustment to reconsider the non-exception of impact fees as outlined in Chapter 17.55.050 and others that may be necessary to determine the validity of the imposition of impact fees as defined by the Eatonville Municipal Code. In a nut shell the Town of Eatonville has imposed certain impact fees which I am appealing. The reason why, in your packet, there is a letter to the school district because that fee is collected directly by the school district and for them to understand I am appealing all the impact fees was asked that I submit a letter to them. I believe that letter on the top right hand corner you will see where the Eatonville School District received that. Without further delay I would like to get into this. My company is known as Carriage House and we are currently building our 85th home within the city limits of Eatonville. That is a certifiable number and a significant number of houses. We have also done in the last ten years over fifty homes outside of the Eatonville boundaries which reside within the school district of Eatonville. I think I have a little bit of experience in dealing with school impact fees and paying school impact fees. In fact, since 1995 we have paid over 1.5 million dollars in permit fees and impact fees. Only twice in this period of time, over the past twelve years, have I asked for a reduction or a reconsideration of the impact fees. Both of those times were within the town limit of Eatonville and both of those times they were approved by

previous town planners. One of those was on a home that we constructed on Eagle Glenn it being the only home that had sidewalks on it. The town, understood at the time, that those impact fees, as defined by the code book, were not allowed and did not collect those. However, they did collect the fee of installing sidewalks. The other area was on top of Penn Avenue, up on top of the hill here, when in 2001 the planning director waived the impact fee. So precedence has been set on the waiver of these fees. However, the current administration has determined that these fees are due. Before I get to deep in this, I want it to be understood that I believe that I have a very, very good relationship with the Town of Eatonville, it's employees, it's staff and it's elected officials. Often times when we come to these meetings there is a lot of anger and bitterness and I think it can be best described as that the town and I have a difference of opinion on the interpretation of the code thereof. As we go through this tonight I am going to break this into two different sections: one is going to be what I would consider a layman's version of the interpretation of the code and the second version is going to be a legal interpretation of the code which my attorney and the town's attorney have gone back and forth on. I will walk you through the layman version of the interpretation of the code. I don't know if you all have your EMC books here. I took the liberty of photo copying the section. Within this portion of my appeal I am going to highlight a couple of different areas.

Schaub excuse me Mr. Litzenberger, before we go any further I think that I need to excuse myself from this portion of the meeting because I am personally in question. I don't want to have my personal feelings interfere with anything going on here. So at this time I'll call the Vice Chairman to take my place. I'm sorry.

Rowland Litzenberger, 43707 18th Avenue East, Eatonville, WA 98328

Does each of the Board of Adjustment members have a complete copy or at least this chapter that is know as 17.60. If you don't mind I will pass this out and we are going to walk through this. This is the chapter that is outlined in the code book as "Impact Fees". If you look down under the definitions 17.60.030 and I believe I highlighted section D. Development activity means any construction or expansion of a building, structure or any change in the use of a building or a structure or any changes in the use of a land that creates additional demands in need for public facilities. What this means is that when we build a single family residence we are, in fact, described as development activity. In the section of the next page that I have given you, it talks about 17.60.040, Imposition of Impact Fee. When is an impact fee required? There is imposed upon all new development, which translated, means all new construction. Activity within the town except those developments exempted under EMC 17.55.040. And for the purpose of the record that should be .50 when you look at the exemptions in the previous chapter that we are going to in just a second. So clearly the impact fee code section in the EMC book outlines a reasonable use of not collecting those impact fees. I am going to give you the next section that I have here which falls back into that talks about exemptions. In letter A it says that no impact, development permits for development. We know development permits are basically building permits now, which creates not additional impact on any concurrency facility are exempt. It talks about your exemptions and if we jump down to section number 12 building permits for a single family residence or a duplex to build on existing lots or parcels platted prior to December 31, 1993. What this is talking about, and Mr. Hudson agrees in his letter, is that the impact fees, going back to what I was just talking about in the previous documentation that I gave you, say's that there are reasons to not have an impact fee. One

of them is under this exemption section which is right here. The lots that I am dealing with where plated prior to 1993. So in my interpretation there should be no impact fees collected for any lots constructed prior to 1993. That is coming straight out of your code book. The issue of concurrency arises and that goes on to our first page. Once again, up on the top, I don't know if you can see it or not. Highlighted, the definition of concurrency. Section E. Concurrency facilities and it is defined as follows. Facilities for which concurrencies is required in accordance with the provisions of this chapter are as follows. Streets, water, power, sanitary sewer, schools, storm water management and parks. Currently, impact fees are imposed within the Town of Eatonville for two of those items. That would be your schools and for your parks. Those are defined in the EMC code book as being impact items. With the increased fees for the sewer and the waterfall under a different category. Jumping down to my next highlighted area. 17.55.030 talking about a concurrency test. Application, this talks about when you apply this. All preliminary and final development permits applications, and once again I take you back up to G and H and that talks about what those development permits are. Those are defined as building permits. Application, all preliminary and final development permit application is subject to concurrency tests except those in EMC 17.55.050. It is very clear that in two different sections of the Eatonville code book that there is an exemption allowed for lots that were created prior to 1993. The 1993 date comes into play because 1992/1993 the State of Washington passed the Growth Management Act which played into a new ball game of how they were going to determine what was going to occur as far as development goes. It is my understanding that when this code book was adopted, when the town adopted the Growth Management and the Eatonville Municipal Code book that this was a way of pacifying those that had lots, at that time, that they would not be impacted with all of these impact fees. I wasn't here in 1993 so I can give you any writing to that but clearly the book here shows in two different sections that this is the intent, it was exempted. That pretty much sums up my first argument right there. I believe that in layman's terms, interpreting this, you as well as I can easily determine that it was not the intent to charge impact fees for those lots plated prior to 1993. Let's now move over to the legal aspect or the legal side of things. When I first brought this issue up the comment was made, hum, that's a good one. Let's get our attorney involved. In your packets you received a letter from Mr. Hudson. The first paragraph says Mr. Litzenberger's appeal asks that the Town, under Eatonville Municipal Code 17.55.050, exempt his new development from the payment of school impact fees. Once again, I want to clarify that I am not focusing just on school impact fees I am focusing on impact fees across the board. The next paragraph basically states, additionally supporting Mr. Litzenberger is the fact that the section imposing impact fees incorporates these exemptions. This would seem to me that my argument has some merit to it. Even the attorney is stating that my argument is supported here. I am not going to read the complete text of this letter. The defense of the town is that code book is in conflict and therefore because the code book is in conflict it is an illegal provision and because it's an illegal provision there is no merit to this. I ask you as a citizenry of this town to determine what is legal and what is not legal. Or is it our responsibility to review the paper work and the legal documentation provided to us and to interrupt that honestly and vigorously and yet to have an attorney come back and say we screwed up. And because we screwed up you are screwed up. I don't think that is the way it was determined. The last paragraph of Mr. Hudson's letter states in my opinion the exemption by Mr. Litzenberger void by a matter of law. Furthermore, I recommend that the language in EMC be changed to bring the exemption into conformance with state law. If this was a clear and concise code reading this would not be an issue. Even the town's

attorney is addressing this issue and says this needs to be address, it's a mistake. The interpretation of the attorney is that it's my responsibility to know what is right and what's wrong. It's my assertion that the town has a responsibility to it's citizens to provide codes and requirements that are clear and concise. Today I received a letter from my attorney outlining our defense in case this goes on to the next level. I feel we have got a pretty good case. Mr. Hudson has received this letter as well and I know that he is going to refute most of what I have to say. I would like to remind the Board of Adjustment that Mr. Hudson's opinion along with my attorney's opinions is just that, they are opinions. And opinions are generally determined by the court of law. We certainly don't want it to get to that point so I am going to treat you folks as what you are tonight as a Board of Adjustments or my jury. To make a determination of what is right, an opinion or a fact. I think that when you read through this you will find that the facts are what they are. They are in writing and because many people haven't brought this up before it doesn't mean it doesn't exist. It just means that they haven't read the book. I would like to hand out this letter that my attorney wrote. This letter is what I would call a lot of legal mumble jumble and it is difficult to interrupt. This letter outlines the reasons why my attorneys' opinion should count versus Mr. Hudson's. The difference in my letter from my attorney and Mr. Hudson's letter is my attorney has sighted previous case law to strengthen our position. Mr. Hudson's letter is strictly an opinion. We have used factual case law to determine our frame work of our appeal. In the past when I have had an appeal or an issue to be brought before the Board of Adjustment, the Town Council or the Planning Commission we have had the right to have the final say to refute. I would like to ask the Vice Chairperson if this is the case tonight once the attorney speaks if I have a chance to speak again.

Harris yes.

Ed Hudson, Town of Eatonville Attorney

Begin point, when an attorney gets up to speak after testimony is put in, it is put on the entire position of the town is that there is not an issue of fact in this case. At least there is not an issue of fact as generally you might think. Generally you might think situation as outlined by Mr. Litzenberger. The attorney's always see facts in a different way and the issue of fact that I will address is the issue of estoppel and you will see that concept addressed in Mr. Branfeld's letter also. I am going to pass out three documents that I will be addressing as we go through this. What I have passed out, one is a state statue in this area, but one that I think is important to look at tonight. RCW 82.02.060. I have passed out two cases. One of them is Paradise, Inc. v. Pierce County and it is a case I looked up after speaking with Mr. Branfeld and the other one is Mr. Branfeld's cited case of DOE v. Theodoratos. I will talk about those in a few minutes. To get us orientated here go to your EMC 1760.030. If you look at that section D where it says development activity. Development activity is a defined term of what sort of development activities take place for which impact fees can apply. That means any construction, not new construction but including new construction for expansion of a building. Not expansion of a new building but expansion of an existing building structure of use or any change in the use of a building or a structure or any change in the use of land that creates additional demand and need for public facilities. That's out of the code itself. If you look at the exemption that we are looking at tonight and you read that language, paragraph twelve you have as the exemption, building permits for a single family residence or a duplex to be built on existing lots or parcels plated prior to December 31, 1993. What you have, if you cross reference these to paragraphs is you have the building

structures that Mr. Litzenberger wants to construct being activity that is clearly within the code to be defined as development activity being exempted out by a bright line date. Could very well be advent of the Growth Management Act, I don't know what the reason is. The bright line has nothing to do with the terminology of the definition. It has strictly to do with the time frame in which the lots were platted. So then the question falls back to is this something that is permitted by state law? One of the easy things to talk about in Eatonville is that this is a town. It does not have charter. It is entirely dependent on state law for everything that the town can do. It is not a home rules town. This means that there is little liberalization that can be taken, if any, by the town of what the state legislature says that the town can do. I have given you RCW 8202060 which is the enabling act legislation. This section of that code talks about impact fees in the local ordinances and the required provisions in local ordinance if the local community decides to have impact fees. Paragraph two is the only paragraph that sets out what can be exempt under the state law. You can exempt low income housing or you can exempt other development activities with broad public purposes. If you do have those exemptions the town has to pay for the impact fees out of the general fund. You have to set up a fund to take those monies and set them aside so that you pay for those. If you look at the 1760130. The town took no action to create an exemption according to the way the state laws is drafted. The town did some how put in the section that Mr. Litzenberger is sighting when he is talking about the adopting of the exemptions. What I am trying to point out to the town here is that the bright line on a date certain sets forth no broad public purpose at all as to why that should be an exemption under the code. If it was an exemption it should be in this other section of the EMC not where it is buried in the provision that Mr. Litzenberger sited. The town, as far as I know, going through the budget process hasn't set aside any funds. Assuming on the basis's that it's got to pay these because it's supporting some exemption. If you look at the exemptions 1 thru 11 in the area that Mr. Litzenberger sites what you find is 1 thru 11 are all examples or definitions of what I call non-activity. It is an effort to determine what sort of things are counter to the development activity paragraph that I talked about when I began my presentation. And all of those can stand on their own as being good examples of what is not development activities subject to causing concern about additional pressures with students coming into the school system. It's only paragraph twelve that clearly is a completely different type of an exception. It is one that goes counter to the definition of development activity. So from a legal stand point I am saying that the town had no authority to put in that reference to the exemption that Mr. Litzenberger is replying upon. That voids that as a matter of law. That is the reason in my letter I am saying that the town should clean this up and correct that situation with regards to paragraph twelve. The issue of estoppel, which is a point that is raised by Mr. Branfeld. Classic issue of estoppel is that a person in the position of Mr. Litzenberger relies on a particular statute usually some action taken by the government and enters into this enterprise because of that and then has the town pull the law back from him at the last moment and put him into a situation where he's damaged. Those aspects of whether or not he got into this not knowing what he was getting into. His testimony is somewhat helpful tonight should this go into court because there is about a thousand times you have paid impact fees. So you are certainly familiar with the impact fee laws. Has he been damaged is another important issue and I think it's the key issue here. These are push through expenses, I think in the construction industry. They are not expenses that are absorbed, they are passed through to the ultimate buyer of the land and that is one of the reasons why the state wanted to put these uniformly out, so that when a community adopted the entire community would adopted them. So all contractors would

have the burden of dealing with this. They could decide whether to eat some of it or pass it through but they would all be treated equally with the burden that would be imposed on them. It is not a burden unique to Mr. Litzenberger and actually, in an interesting way here, in the way that he wants this applied he would have a benefit that other builders here who are building newer construction after 1994 do not. There would be an advantage to working, from his stand point, with these particular lots that other developers would not have. You have the argument here that he has not been hurt by this. I passed out a case which takes a little more severe look at this. *Paradise, Inc. v. Pierce County*, it is not the normal estoppel argument. Because we are talking about estoppel against a governmental entity. In this case you will notice that it talks about equitable estoppel against the government is disfavored. Success on such a claim requires that it be necessary to prevent a manifest injustice. The exercise of government functions must not be impaired as a result so you would have question here as to whether there is an impairment on the part of the current code to the town's functioning when it is not budgeting for these sort of expenses as a result of this one provision in the code. Is it a manifest in justice here to not find equitable estoppel in this case? The doctrine may not be asserted against the government unless it is necessary to prevent a manifest injustice and it must not impair the exercise of government functions. So the issues that do arise here have to do with the legal issues of estoppel. Those issues I can't say how they would hold up. Some irony to today's hearing because I want you to take a look now at Mr. Branfelds case. It is an unusual case for opposing council to have to put up. I can understand it because there are very few case and I'm not sure if there are many here in the state where equitable estoppel has been granted against a government entity. In this case the person who would be in the position of Mr. Litzenberger was not denied his claim of equitable estoppel. The last paragraph that I have highlighted is the one that I wanted to bring to your attention. It says that the court in this case is resting its decision to deny equitable estoppel where the representation eligibly relied upon our matters of law rather than fact. Equitable estoppel will not be applied. I pointed out in the beginning that this is a situation of law. The state law does not permit the town to do what it has done in this case. Even if there was a factual question here under equitable estoppel it would not be in this case. This case is one in which equitable estoppel is sought against a government entity, the town and the holding here in the case that Mr. Branfeld provided the mere issue is one of law as opposed to fact denies the argument of Mr. Litzenberger to go to court, if that is where he chooses to go after this, and raise a factual question. The issue is one of law. And there is no authority for the town to do what it has done and because of the state laws lack of authority to do what the town has done Mr. Litzenberger just has no case.

Frink how long has that state law been in effect. Has it been in effect since 1993?

Hudson The handout that I gave you on the statute would show it passed in 1990.

Rowland Litzenberger, 43707 18th Avenue East, Eatonville, WA 98328

Thank you Mr. Hudson for that determination. There may be some determination between the types of a town vs. a city. The idea that it is state law to apply impact fees is erroneous. We recently picked up a building permit and applied for two more in the City of Tacoma. City of Tacoma has no school impact fees nor does it have a park impact fee. Impact fees are an agreed upon imposition between a school district or a town to raise funds for capital improvements. In the Town of Eatonville the

Grandview Sub Division originally did not have impact fees. Impact fees were not required or were not agreed upon when that plat was approved. Grandview plat being right up the street here. However, the developers at that time agreed to a \$500 impact fee prior to the imposition in the agreement of any impact fees between the school district and the town. What that meant was if you were to build a house and the school impact fee was \$100 you were stuck with \$500. It also meant that when the impact fees in 1999 went to \$1425 we were able to pay \$500 for the impact fee. That was a pre-agreed upon amount. Thirty plus lots up there, \$500 impact fee. I was up there Sunday and there is still a building site up there which would apply for the \$500 impact fee. Now Mr. Hudson agrees that that is not the case. The Town of Eatonville accepted that agreement. It is in their town records. I would really hate to see the town have to fork out all that money that they didn't collect, that Mr. Hudson says is due. I disagree with him that the town is responsible for these funds. Mr. Hudson said these are push through fees. I disagree. Impact fees have to be paid for by somebody. One of these homes is going to be lived in by my mother and father-in-law. Guess who is paying the bill. They are. It's not a buyer. Ultimately somebody is paying for this, whether or not that the buyer that comes into town has the ability to read the code and say that I'm getting my house for X amount of dollars cheaper because of the impact fees is probably not going to happen. The fact of the matter is that the town approved this documentation has approved previous waivers of the impact fees and has approved agreements that are outside of the normal context of the impact fees has yet to pay one dime to rectify those. I don't believe this is an issue here that they have to pay money into that. If we want to get technical I had a conversation with the Town Clerk, about a month ago, and Nick Bond separately. Amazingly they both said the park impact fee was not being applied for as required by code. Separate conversations, same day, fifteen minutes apart, separate floors of the building. Code calls for very specific way for impact fees to be dealt with. One being capital improvements. Crystals comment to me was "we take the \$400 impact fee and put it in the general fund and pay the bills with it". Obviously the town is not following the outlines in the requirements of the impact fee. It's not my problem that the town is not following that code. That is the town's responsibility. The state comes back and says, town you have to pay this money. It's because they made a mistake, not me. There have been several cases recently where the department of corrections have let people go when they shouldn't have and these people have caused crimes, murder and death. Has the state been exempt? No. They made a mistake. The state has paid for it. That is a fact. Mr. Hudson would like to hide behind rule of law. I can't cite specific cases. I can only cite what the book says and what I believe is right. The town made a mistake, like I've said, that is their responsibility, it's not mine and it's not yours as a citizen to pay for that. I don't believe that the town is responsible to pay because if they do they have a whole lot of houses that they have to pay a whole lot of money for because this is going to get really ugly really quick. I would just ask that you look at this as a whole, look at it like I have asked you to look at it as a jury and determine what the books say. It does say what I have said it says. His argument is that it doesn't apply because of rule of law and I say the rule of law applies here because that is what has been approved, that is what has been presented to the public, previous cases have allowed the waiver as I have mentioned before. Those are documented by the town, you can find them in the books. I leave that with you now and I would hope that you would see it my way, in layman terms. I hope that I have made my case clear.

Beach now neither one of us are lawyers so we are back to this layman terms. On your handout 17.55.050 it says exemptions A. A is above twelve. Now A is the general statement

about what should be following? It says no impact development permits where development which creates no additional impacts on any concurrency facility are exempt from the requirements of this chapter. Such development concludes but is not limited to. And as Mr. Hudson pointed out all of the first eleven are basically things that have no impact. It seems to me your layman's test, I'm a layman, that A governs what follows and if we get down here to twelve and that has nothing to do with A, except that it happens to be in that list. It is a strange provision in this list. It is unlike all of the other provisions. It certainly is not a fit under A at all. Give me your layman's analysis of why that number twelve is not just simply an error.

Rowland Litzenberger, 43707 18th Avenue East, Eatonville, WA 98328

When I read this code book I would assume, and perhaps that's a mistake on my part, that this book is a document that has been followed and approved and read. I can only tell you that this exemption states that there is twelve items here. It is not for me to determine what is or what isn't. If I was coming in and I had no experience what so ever in building what so ever and I was going to read this like I would read a comic book would I know the difference between four and seven, probably not. I only point that I can make in answer to you is that all twelve of these items fall into here. I can read it, I can apply it and I can accept it. If it is in the wrong place it's not my problem.

Bond Mr. Hudson I would like to clarify for the record. If there was a potential appeal should the Board of Adjustment deny this appeal is there any potential that the original intent of the ordinance of the record under which that ordinance was passed would have any bearing on an outcome if this would appeal. My second question is what are the implications of granting this appeal if the Planning Commission sides with Mr. Litzenberger. In your opinion does the town have to pay the difference from it's general fund on these three houses for the impact fees which he is contesting? If the Board of Adjustment were to side with Mr. Litzenberger and grant his appeal, is the town, in your opinion, responsible for paying the cost of those impact fees to vote the school district and to our parks funds out of our general fund?

Hudson generally speaking when the law is not followed that is put forth by the state and is void for that purpose the intent of a town to do what they did doesn't make any difference. It would seem to me the intent of the town was to certainly put in that paragraph twelve. How it came about is something that I just don't know the answer to. I don't think the intent of the town would be particularly relevant. With regard to RCW 82.02.060, paragraph two says "you may provide an exemption, and it provides for the types of exemptions that are allowed. Low-income housing or other development activities with broad public purposes. Then it say provided that the impact fees for such development activities shall be paid from public funds other than impact fee accounts. Which means it has to be from new funds from some place in the town to do that. One of the state agencies is the state auditor. I personally believe that if the town did not pay those impact fees as part of the audit and someone was claiming an exemption underneath the impact fee sections through this particular provision I think that the state auditor would find fault with the town for not paying the impact fees even though the impact fees were not properly exempted out for this type of activity.

Bond I would like to point out for the record the current school impact fees \$2800 and the parks impact fees are \$400 per house and I think that we are talking about three houses that are subject to this particular hearing.

Rowland Litzenberger, 43707 18th Avenue East, Eatonville, WA 98328

I can only finish up tonight by saying, as wrong as it may seem I shouldn't have to pay for the sins of my father. Nor should you or should we have to pay for the sins of our government. If the government makes a mistake, the government should pay for it. Impact fees are not required by state law and I will go to my grave saying that. They are not. Whether or not they are required to be paid if they are imposed probably is true. We are not required by law to have impact fees. In fact last month or earlier in January the Town Council was presented with a fee increase on the school impact fees. Guess what? They turned it down. Currently in Pierce County the fee is higher than what it is in the Town of Eatonville. So broad latitude exists for towns to determine impact fees. As I said before \$500 was agree upon at Grandview, which still exists. A builder on that lot would get it for \$500. That is the agreement. The town is not required to spread the difference. I think that there is some fear mongering going on here about how much money is going to be spent by the town. I don't think that is very fair to the town people. In conclusion I would like to say thanks for your time.

Harris that concludes the hearing portion and we are going to go ahead and close this hearing now and it will be open to the commissioners to discuss or have questions between themselves. Are there any comments from the commissioners? Hearing none, is there a motion?

Beach I move that the appeal be granted.

Lambert second.

Beach although I made the motion I will defer to anybody on the commission that wishes to speak in favor. I don't hear anyone so I will speak against the motion. The motion is to grant the appeal. I am speaking against the motion. I think the key here is in that list of exemptions in the code and that the one does not fit the rest of them. I think the key is also in the town attorneys point of view on this as a matter of law. We are not lawyers and the town attorney does represent the town and if he thinks this the proper interpretation of the law then I think that we, unless we have good reason otherwise, we ought to follow that opinion. Now, the only good reason that I can think of for not following the town attorney is that if we were to follow the town attorney that it would create a serious inequity to Mr. Litzenberger and I don't think that it does create a serious inequity to Mr. Litzenberger that in fact to grant his appeal creates a serious inequity to others. And so that is why I will vote against the motion.

Lambert reading the statute it seems to me that people that own lots that were created prior to December 31, 1993 received an advantage as to the value of their lots. I don't know what Mr. Litzenberger paid for the lots. I'm assuming when he bought them he had this exemption in mind, I don't know. I certainly think that is worth considering. The other questions that I have are the town liable for any fees that it has granted exemptions for in the past. And I don't know the answer to that question to that.

Harris the motion on the floor stated as a positive motion and has been seconded is that the appeal be granted. So a yes vote would be voting for Mr. Litzengerger appeal and a no vote would be for voting against it. Are we ready to have the question and vote? All those in favor. Two in favor. Opposed. One opposed. Vice Chair opposed. We have a tie vote. The motion is defeated. This closes the Board of Adjustment meeting.

Schaub returns as Chairman.

Public Hearing - Buildable Lands Ordinance 2008-3

Schaub opens public hearing on Buildable Lands Ordinance 2008-3

Bond reads through Buildable Lands Finding of Fact.

Beach by adopting this in the form that it is stated we are agreeing to a whole bunch of things that we have no idea what the implications of them are. In fact it is not required that we adopt this type of resolution. We have a memorandum that accompanied material that Mr. Bond provided us from Leonard Bauer, Managing Director of Growth Management Services, State Dept of Community Trade and Economic Development and he has cited in this letter a conclusion of the Central Puget Sound Growth Management Hearing Board in which he says "therefore it logically follows that to establish a time frame for appeals to the board the completion of a buildable land report should be acknowledged through legislative action and the adoption of a resolution or an ordinance finding that the review and evaluation has occurred and noting its major conclusions. We are recommending to the Town Council that it, by this language, acknowledge the finding that review and valuation has occurred. Which seems to me all we need to do is site the 2007 Buildable Lands Report that's all we need to do by that is site it. And has noted its major conclusions. There are a number of conclusions in here but I don't think that we need to go to great lengths on the conclusions. I think that there is a perfectly fine conclusion on lines 38 to 41 of the draft ordinance. Which says the evaluation of residential and employment capacity is documented in the 2007 Pierce County Buildable Lands Report concludes that there is sufficient capacity to accommodate the total twenty year population allocation and employment target for the entire county. And so that is the major conclusion. I don't see why we need to recommend any more than just that. The Town Council acknowledged that it has received a review and evaluation entitle the 2007 Pierce County Buildable Lands Report which sites this conclusion and that we do it by resolution not by ordinance.

Bond I am in total agreement on doing this by resolution. Pierce County drafted the entire language of this document and said fill in the blanks and that is our starting point. I think that a resolution is a less binding way of going about handling this particular issue. If we apply to CTED for a grant, the grant criteria are often contingent on you being in compliance with state law and you have a Comp Plan that is certified and up-to-date and has been reviewed by CTED and I think that this is something that potentially CTED would hold against us if we tried to go after funds. The biggest risk is that we would be penalized by CTED.

Beach I'm not advocating that we reject it. I'm advocating that we do as Mr. Bauer's says that we ought to do and that we acknowledge that we have received it and that we state what

we see as a major conclusions in it which is sort of the minimum and that does not commit us to anything but we have received it. We recognize it's existence and we go on from there.

Bond I agree with you. I think that the action does need to be taken and this needs to be taken to a resolution form and that it needs to be simplified greatly and if we were to continue this hearing, which I am requesting that we do, I would redraft this in that form and have a similar finding.

Beach reads into the record a substitute Buildable Lands Ordinance. A hard copy was not presented to the recording secretary for the record.

Bond will take it suggested motion under consideration. I would ask that this hearing be continued for the first meeting in April 2008.

Beach moves for a postponement of the Buildable Lands Ordinance Public Hearing until April 7, 2008.

Lambert second.

Schaub we have a motion to postpone until April 7, 2008 and it has been seconded in a continuation. All those in favor. All in favor. So carried.

Public Hearing – International Property Management Code.

Bond back in late 2007 we discussed the need for further property maintenance, especially in regard to yards and landscaping. We previously adopted an ordinance which dealt with abandoned buildings in Eatonville which resulted in the removal of several buildings. There was still a demand for a property maintenance ordinance, which would be more stringent as far as the requirement of keeping their property up in town and it was brought to my attention by councilmember Allison. The International Code dealing with construction regulations, there are a number of conflicts between the International Code and our code. The property maintenance code covers all provisions of that code and enforcement of abandoned buildings. It also doubles up on abandoned vehicles, but our code complies with state law and we don't want this to replace ours, I have inserted a citation to refer to our existing code for enforcement on abandoned vehicles. One more change is houses having addresses visible on the front of the house, our code already has this so it has been struck, with a footnote added referring to section 18.06.120 in our code. There are also 6 blanks to be filled out by individual jurisdictions as they desire, having to do with screens on windows, this would be relevant for landlords, and also grass height, I suggested 8 inches but, some have 12 inches or it may be stricken completely. It also has blanks for dates, for structure to have working heat and for screens on windows, I have made suggestions but am open for modification. Instead of going over this whole code, I would rather answer questions where you have them, I will say there are a number of titles starting with section 4 that require all existing homes to have the same standards that new homes are constructed. We need to consider carefully, this may be more extreme than the Town of Eatonville wants to adopt, but it has been a very effective tool in other communities.

Beach stated that he spoke with someone very familiar with the electrical code and they told me that except in cases of serious problems of safety, this is not retroactive, is that true of this?

Bond had discussion with Building official and had him review, but would have to go over more thoroughly to figure out if this is retroactive.

Beach it was explained to me that unless there was a violation that created serious safety or health problems that this would not be applied retroactively, but if work was to be done in terms of remodeling this would apply, unless a safety issue is not applied to existing structures.

Bond that is correct, it is addressed in opening chapter of the document as to when code official would enforce. Beach feels needs to be clearly stated for all to understand.

Schaub inquired as to who enforces. Bond, Tim Lincoln the code official, depending of type of violation but would likely be dealt with by the Public Works and it is more of a tool that is complaint based.

Schaub commented on the abandoned vehicles and that we are not currently doing anything about current abandoned vehicles.

Bond we have enforced on a couple of different occasions, one in Ohop Valley and it was a real struggle to get compliance. The state has very specific statutes regarding abandoned vehicles and how to deal with them, and I believe the Dept. of Licensing is also involved. The method for compliance in the International code and our code is different and I chose to stick with our code.

Treyz I get the impression that most of the enforcement would be through complaint, in my opinion if we do that we will have a hard time enforcing, most people don't want to complain, I would like to see a code official take responsibility and do routine checks rather than by complaints. The reason is rather than adopting the code per say, it may be to our advantage to list exceptions to the code and put those in.

Harris likes the concept of having this, one problem is with the grass height, if I go on vacation for 2 weeks I would be out of compliance because my grass would grow 8 inches. There are many areas in town that are so steep it would be difficult to keep at 8 in. we need to go in and look at the parts that would need modifying where one size doesn't fit al.

Bond it is a big document and could use discussion at a committee, at this point if someone wants to pursue it and send it to committee.

Lambert seems that it would have to apply retroactively, a building code covers things you are about to do and a maintenance code covers things that already exist. There are many people in Town on limited income and it seems excessive. The way I read it, you not only get to inspect the outside of my home but the inside as well then send me a bill for it. Is not fond of that and feels it is invasive, before we adopt this it needs a huge edit.

Mayor Smallwood agrees with Harris, this is just a format to start, we spent 6 to 8 months on the abandoned buildings before it passed. We need to make this a Eatonville Ordinance not an International ordinance. We need an ordinance to help us get rid of the eyesores and it needs to fit Eatonville and not invade in people's privacy.

Schaub agrees with Mayor and offers to be on the committee.

Lambert clarifies with Bond as to whether the international code council is the same as the Uniform Building code comes from. Bond stated that he thinks they are the same group but have changed names, not positive but uniform codes are not used by any jurisdiction that he is aware of.

Beach feels may be the way to approach is for the Chair and Bond to be in consultation and maybe have Bond bring manageable chunks of this, maybe one chapter at a time, to be modified or not included at all.

Treyz asked if Bond could make up a list for the members of what he wishes to accomplish, and maybe we could copy it over into our own municipal code in subsections. Trying to address every issue. Need to enhance the beauty of our town without having an ordinance that isn't overbearing or overpowering to citizens. Bond stated that he could start a list and bring it to the committee to start building an ordinance. Treyz states that he would be willing to sit on the committee.

Mike Jeffries- 133 Mashell Ave.- states that the abandoned building ordinance has been very effective dealing with extreme concerned and not with day-to-day things. In 1968, Chuck McTee was on the Planning Commission and they were dealing with a property that had abandoned cars on it and feels that if it took 40 years to solve an eyesore then there is a problem. There is an \$800,000 park across the street from this eyesore and feels there should be an easy way to come in and say in the next 30 days this needs to be cleaned up or we will do it and send a bill to you. Would like to see an ordinance that deals with extreme or lack of behavior.

Schaub states that there is a section that deals with the size of your living room or your bedroom, or whether you have a garbage can in your kitchen. I am concerned with the major things that make the community look terrible and we need to address these issues, most people don't care whether or not you have a garbage can in your kitchen. The main thing is to enforce what we have written. Continued the Public Hearing with Bonds permission.

New Business: None

Old Business: None

Public Comments: There were none.

Commissioner Comments:

Beach explains the vote at the board of adjustment hearing, according to Roberts Rules of Order the chair can vote to create a tie or break a tie and they have as much vote as anyone else, on a small committee they can even make motions and second them.

Next Meeting: February 18th - cancelled

Motion to Adjourn Beach motions and Harris seconds. Meeting adjourned at 9:50PM.

PC Vice Chairman, Robert Schaub

PC Recorder, Karen T. Bennett

PC Secretary, Larry Frink