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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

No. 271234

**COURT OF APPEALS DIVISION III
STATE OF WASHINGTON**

KITTITAS COUNTY, a political subdivision of the State of Washington,
BUILDING INDUSTRY ASSOCIATION OF WASHINGTON (BIAW),
CENTRAL WASHINGTON HOME BUILDERS (CWHBA),
MITCHELL WILLIAMS, d/b/a/ MF WILLIAMS CONSTRUCTION
CO., TEANAWAY RIDGE, LLC, KITTITAS COUNTY FARM
BUREAU, and SON VIDA II,

Appellants,

v.

KITTITAS COUNTY CONSERVATION, RIDGE, FUTUREWISE,
and EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD,

Respondents.

**PETITIONER SON VIDA II'S ANSWER TO KITTITAS COUNTY
CONSERVATION, RIDGE, AND FUTUREWISE'S
MOTION FOR DISCRETIONARY REVIEW**

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ORIGINAL

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- 1. RCW 34.05.518**
- 2. KCC Chapter 17.58**

I. INTRODUCTION

Son Vida II (“Son Vida”) commenced an action in Kittitas County Superior Court seeking Superior Court review of the decision of the Eastern Washington Growth Management Hearings Board (“Board”) in which the Board found portions of Kittitas County Code (“KCC”) Chapter 17.58 did not comply with the Growth Management Act (“GMA”). KCC Chapter 17.58 establishes an airport overlay zone for certain small airports in Kittitas County.¹ Kittitas County Conservation, Ridge and Futurewise (hereinafter collectively referred to as “Futurewise”) now seek an order allowing discretionary review by this court pursuant to RAP 6.3 and RCW 35.05.518. Son Vida opposes Futurewise’s Motion for Direct Review.

II. PROCEDURAL FACTS AND BACKGROUND

Kittitas County enacted the Kittitas County Development Code Update as Ordinance 2007-22 on July 19, 2007. Ordinance 2007-22 was an update of the Kittitas County Development Code. Futurewise appealed Ordinance 2007-22 to the Board. Son Vida intervened in the case before the Board along with the Building Industry Association of Washington, Central Washington Home Builders Association, Mitchell F. Williams, Teanaway Ridge, LLC, and the Kittitas County Farm Bureau. On

¹ KCC Chapter 17.58 is attached as Appendix 2 and is referred to in this Answer as the “Airport Overlay Zone”.

March 21, 2008, the Board issued a Final Decision and Order (“FDO” or alternatively the “2008 FDO”).²

Son Vida II filed a Petition for Review in Kittitas County Superior Court Case No. 08-2-00210-4 on April 10, 2008. Son Vida’s petition for review challenges the Board’s decision that the Kittitas County Airport Overlay Zone did not comply with the GMA.

Son Vida was the petitioner in EWGMHB 01-1-0017 (the “2001 Case”). In that case, Son Vida challenged Kittitas County Ordinance No. 2001-10 which adopted KCC Chapter 17.58 KCC initially. In the 01-1-0017 Final Decision and Order (“2001 FDO”) the Board found the densities allowed within Chapter 17.58 KCC as it relates to the Ellensburg Airport (“Bowers Field”) complied with the GMA.

Son Vida appealed the Board’s decision in 01-1-0017 to the Kittitas County Superior Court.³ The Superior Court case is still an active case and has not been heard by the Kittitas County Superior Court as Son Vida has tried to resolve the case with Kittitas County and the City of Ellensburg.

Four other Petitions for Review requesting judicial review of the 2008 FDO have been filed in Kittitas County Superior Court. Son Vida sought to consolicate its petition for review with its pending appeal in the

² A copy of the FDO is attached to Futurewise’s Motion for Discretionary Review. The portion of the FDO addressing the Airport Overlay Zone begins at p. A-43 and ends at p. A-55.

³ Kittitas County Superior Court Cause No. 02-2-000163-0. In that case, Son Vida alledged, among other things, that the densities allowed in the 2001 Ordinance should have been greater.

2001 Case. The Superior Court denied Son Vida's motion to consolidate and instead, over Son Vida's objections, consolidated Son Vida's case with the four other cases under Kittitas County Superior Court Cause No. 08-2-00195-7.

III. COUNTER STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Futurewise identified eleven (11) issues on review. Son Vida is only concerned with Issue 5 as it relates to the Kittitas County Airport Overlay Zone and specifically the Airport at Ellensburg, WA known as Bowers Field.

IV. COUNTER STATEMENT OF THE CASE

Son Vida intervened before the Board solely on Issue No. 8 in the Board case. The issue was framed as follows:

“Does Kittitas County's failure to revise Chapter 17.58 KCC (Airport Zone Uses) to avoid land uses that concentrate people, in either prohibiting residential uses or limiting them to one dwelling unit per five (5) acres within Airport Safety Zones comply with RCW 36.70A.020(3, 5, 12), RCW 36.70A.070, RCW 36.70A.110, RCW 36.70A.130, and RCW 36.70A.510?”⁴

This issue is in effect does Kittitas County's Airport Overlay Zone comply with the Growth Management Act.

Futurewise asked the Board to determine whether “Kittitas County's failure to revise Chapter 17.58 KCC (Airport Zone Uses) to avoid land uses that concentrate people, including either prohibiting residential uses, or limiting them to one dwelling per five (5) acres within

⁴ Petition for Review p.3, ln.11-12; see also, Prehearing Order.

airport safety zones comply with RCW 36.70A.020(3,5,12), RCW 36.78.070, RCW 36.70A.110, RCW 36.70A.130, and RCW 36.70A.510”.

Son Vida is the owner of real property which is located in Kittitas County, Washington. The property owned by Son Vida is located, in part within City of Ellensburg City limits and in part in Kittitas County. The property located in Kittitas County is partially in the City of Ellensburg Urban Growth Area (“UGA”) established by Kittitas County. A portion of Son Vida’s property is outside the UGA and is designated under Kittitas County’s Comprehensive Plan as rural. Son Vida’s property outside the Ellensburg City limits lies within, and is therefore, subject to Kittitas County’s Airport Overlay Zone (Chapter 17.58 KCC). The portion of Son Vida’s property within the City of Ellensburg is subject to the City of Ellensburg’s Airport Overlay Zone (Chapter 13.11 EMC).

When Kittitas County began its review of its development regulations which are the subject of this Petition for Review, the Airport Overlay Zone provided for a variety of densities depending upon the “turning zone” the property was located in. The Airport Overlay Zone included property inside the City of Ellensburg Urban Growth Area and included property outside the City of Ellensburg Urban Growth Area. In comparing the Airport Overlay Zone that existed at the time the Board issued the 2001 FDO with the Airport Overlay Zone which is the subject of this appeal, there were no changes made to the Airport Overlay Zone densities at the Ellensburg Airport. The changes that were made applied

the Airport Overlay Zone, for the first time, to other airports in Kittitas County. The changes to the Airport Overlay Zone did not change densities allowed at Bowers Field pursuant to KCC 17.58.050(2).

The issue in the 2001 Case was whether the Airport Overlay Zone violated the GMA for a variety of reasons one of which was the densities set within the Airport Overlay Zone. The Board concluded the Airport Overlay Zone and specifically the densities within the Airport Overlay Zone complied with the Growth Management Act. In the 2001 Case the Board relied on a letter from the Washington State Department of Community Trade and Economic Development (“CTED”) to the City of Ellensburg discussing the densities within an airport overlay zone. CTED’s recommendation to the City of Ellensburg was the densities within the Urban Growth Area of the City of Ellensburg be set at a minimum of 4 units per acre within the Airport Overlay Zone. CTED, as the Board pointed out in its 2001 FDO, opined that the recommended minimum of 4 units per acre did not preclude a variety of densities within an airport overlay zone. CTED also opined that one housing unit per acre is not an urban density. The Board in the 2001 Case also concluded the densities mandated by the Airport Overlay Zone were GMA compliant. Thus, the densities Petitioners now allege violate GMA were the densities the Board concluded were consistent with the Growth Management Act in the 2001 FDO in Case No. 01-1-0017.

Son Vida's petition for review before the Kittitas County Superior Court in the 2008 case asserts in part that the Board ignored their prior decision when the Board concluded this case presented "unique facts and circumstances".⁵ The case did not present any unique facts or circumstances instead Kittitas County, just as it did in 2001, developed an Airport Overlay Zone based on recommendations from Washington State Department of Transportation ("WSDOT"). The Board ignored the distinction between a recommendation and a requirement, a point the Board recognized and applied in the 2001 Case to conclude the original Airport Overlay Zone was GMA compliant. As such the Board ignored the law and the facts in this case.

The effect of the Board's conclusion is that since deciding the 2001 Case over 6 years ago, development has occurred in turning Zones 1, 2 and 5 based on existing ordinances in the vicinity of Bowers Field.⁶ Property has been platted, homes have been built, neighborhoods planned and started all in an area and in a fashion the Board has previously given its "blessing" to. Now for no reason, and ignoring its prior decisions, the Board concludes this development is not in compliance with the GMA.

V. DISCUSSION

In deciding whether to accept discretionary review of this case the court should apply criteria set forth in RCW 34.05.518(3).⁷ In addition, the court must also apply the Rules of Appellate Practice ("RAP")

⁵ FDO p. 48 L. 8.

⁶ Son Vida owns land in Zones 2 and 3.

⁷ The full text of RCW 34.05.518 is attached as Appendix 1.

governing discretionary review and specifically RAP 6.2 and 6.3. The Board's Certificate of Appealability is immaterial. The issue is whether the Court of Appeals believes the criteria set forth in RCW 34.05.518 are present. If the court is not convinced the criteria are met then the Court of Appeals should decline direct review and let the matter be decided by the Kittitas County Superior Court. Futurewise argues review is justified under RCW 34.05.518(2)(a), (b) and (d).

There is not a fundamental and urgent issue of statewide importance associated with whether or not Kittitas County's Airport Overlay Zone is GMA compliant nor do the issues associated with Kittitas County's Airport Overlay Zone have significant precedential value. In its discussion of why review should be accepted Futurewise does not mention Son Vida's 2001 or 2008 petitions nor the issues of whether the Airport Overlay Zone is GMA compliant. Instead Futurewise's focus is on what is a rural density and what is an urban density. Futurewise does not discuss the fact Son Vida has a petition for review pending in Kittitas County Superior Court asking the court to review the Board's 2001 FDO. The 2001 FDO found the Airport Overlay Zone was GMA compliant. The issue presented in Son Vida's appeal is an isolated local issue having an impact on only one of the airports in a small rural county. The question of what is an appropriate rural density and whether there should be a "bright line rule" is the focus of Futurewise's request for Discretionary Review.

That is a much different issue than Son Vida raises in its petitions for review.

Futurewise also asserts there is likely significant precedential value in how these cases are decided. Futurewise fails to explain how a local decision dealing with a small airport in Ellensburg has any precedential value. Futurewise's argument is again focused on the rural density issue, whether there is or should be a "bright line rule" on rural densities and if so, what that density should be. Futurewise desperately wants the rural density issue to be decided, but it is an issue that will likely go to the Supreme Court. It is significantly different than Son Vida's localized issue which has no precedential value since every airport is different and the facts and circumstances surrounding each airport overlay zone are different. What Kittitas County did or did not do with respect to the Airport Overlay Zone which applies to Bowers Field has no applicability to other airports across the State. Therefore, the case has no precedential value.

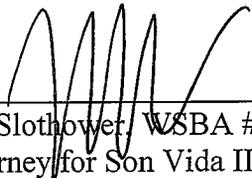
When Futurewise opines that without direct review by this court the delay will be detrimental they focus on the rural land issue, never mentioning Son Vida's challenge to the Airport Overlay Zone. The focus of Futurewise's basis for review is that without direct review projects will continue to be approved, land will be subdivided and rural sprawl will result. The Board previously determined the Airport Overlay Zone was GMA compliant in 2001 and since then development has occurred based

on that decision. Therefore, there is no prejudice or bias to any party by not granting direct review of the Airport Overlay Zone issue. Instead it makes more sense to and avoids a duplicative process to not accept direct review of the Son Vida case. That would leave Son Vida free to pursue both of its Superior Court cases at the same time in Kittitas County Superior Court.

VI. CONCLUSION

This court should decline to accept direct review of Son Vida's case, leave it in the Kittitas County Superior Court so Son Vida can pursue consolidation of this case with the 2001 Case to which Futurewise was not a party.

Respectfully submitted this 8th day of July, 2008.



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APPENDIX 1

RCW 34.05.518

(1) The final decision of an administrative agency in an adjudicative proceeding under this chapter may, except as otherwise provided in chapter 43.21L RCW, be directly reviewed by the court of appeals either (a) upon certification by the superior court pursuant to this section or (b) if the final decision is from an environmental board as defined in subsection (3) of this section, upon acceptance by the court of appeals after a certificate of appealability has been filed by the environmental board that rendered the final decision.

(2) For direct review upon certification by the superior court, an application for direct review must be filed with the superior court within thirty days of the filing of the petition for review in superior court. The superior court may certify a case for direct review only if the judicial review is limited to the record of the agency proceeding and the court finds that:

(a) Fundamental and urgent issues affecting the future administrative process or the public interest are involved which require a prompt determination;

(b) Delay in obtaining a final and prompt determination of such issues would be detrimental to any party or the public interest;

(c) An appeal to the court of appeals would be likely regardless of the determination in superior court; and

(d) The appellate court's determination in the proceeding would have significant precedential value.

Procedures for certification shall be established by court rule.

(3) (a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.21B.005 and

growth management hearings boards as identified in RCW 36.70A.250.

(b) An environmental board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest and either:

(i) Fundamental and urgent statewide or regional issues are raised; or

(ii) The proceeding is likely to have significant precedential value.

(4) The environmental board shall state in the certificate of appealability which criteria it applied, explain how that criteria was met, and file with the certificate a copy of the final decision.

(5) For an appellate court to accept direct review of a final decision of an environmental board, it shall consider the same criteria outlined in subsection (3) of this section, except as otherwise provided in chapter 43.21L RCW.

(6) The procedures for direct review of final decisions of environmental boards include:

(a) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and serve the appropriate environmental board and all parties of record. The application shall request the environmental board to file a certificate of appealability.

(b) If an issue on review is the jurisdiction of the environmental board, the board may file an application for direct review on that issue.

(c) The environmental board shall have thirty days to grant or deny the request for a certificate of appealability and its decision shall be filed with the superior court and served on all parties of record.

(d) If a certificate of appealability is issued, the parties shall have fifteen days from the date of service to file a notice of discretionary review in the superior court,

and the notice shall include a copy of the certificate of appealability and a copy of the final decision.

(e) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(f) If a certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

Chapter 17.58 AIRPORT ZONE*

Sections

17.58.010 Purpose and intent.

17.58.020 Statutory authority.

17.58.030 Definitions.

17.58.040A Airport overlay zoning district: Kittitas County Airport (Bowers Field).

17.58.040B Airport overlay zoning district: Easton State, Cle Elum Municipal, DeVere Field.

17.58.050 Uses, development requirements and restrictions.

17.58.060 Permits.

17.58.070 Nonconforming use - Regulations not retroactive.

17.58.080 Violations and enforcement.

17.58.090 Appeals.

17.58.100 Judicial review.

17.58.110 Conflicting regulations.

*For airport use regulations, see KCC Title 19. Prior history: Ords. 88-4 and 83-Z-2; Res. 83-10; Vol. 5, p. 362, 1979.

17.58.010 Purpose and intent.

The purpose and intent of this chapter is to establish an airport overlay zoning district on properties located on, adjacent to, and in the vicinity of public-use airports including Easton State, Cle Elum Municipal, DeVere Field and Kittitas County Airport (Bowers Field), in order to protect the health, welfare, safety, and quality of life of the general public, property owners, airport operators, and aviation community; and also to ensure compatible land uses in the vicinity of the affected environments of the airport overlay zoning district. With regulations set forth in the Adopted 14 CFR Federal Aviation Regulations Part 77. (Ord. 2007-22, 2007; Ord. 2001-10 (part), 2001)

17.58.020 Statutory authority.

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 and public-use airports. (Ord. 2007-22, 2007; Ord. 2001-10 (part), 2001)

17.58.030 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Airport" means public-use airports including Easton State, Cle Elum Municipal, DeVere Field and Kittitas County Airport (Bowers Field).
2. "Airport elevation" means 1,766 feet above mean sea level.
3. "Airport overlay zoning district" shall include the runway protection zone, inner safety zone, inner turning zone, outer safety zone, sideline zone, and the airport operation zone as depicted on Map "B" - "Airport Safety Zones"¹ and numbered zones 1 through 6, respectively, and shall also encompass the area identified within 14 CFR Federal Aviation Regulations (FAR) Part 77, as amended and depicted on Map "A" - "Part 77".²
 - ¹ Map "B", referenced throughout this chapter, is on file with the Kittitas County public works department.
 - ² Map "A", referenced throughout this chapter, is on file with the Kittitas County public works department.
4. "Airport surface" means a surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and along the same slope as the approach zone height limitation slope set forth in KCC

- 17.58.050. The perimeter of the approach surface coincides with the perimeter of the approach zone.
5. Approach, Transitional, Horizontal, and Conical Zones. These zones are set forth and defined in KCC 17.58.040.
 6. "Conical surface" means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 feet upward to one foot outward for a horizontal distance of 4,000 feet.
 7. "Flammable and combustible liquids" shall be defined as the type and design of underground and aboveground liquid storage tanks; the location and design of the fuel dispensers and dispenser nozzles; the design and specifications for related piping, valves and fittings; the location and classification of electrical equipment, including emergency fuel shutdown devices; and specifications for fuel storage and pressure-relief components, and shall be in accordance with Article 52 (5201.3.2(#1) Motor Vehicle Fuel - Dispensing Stations), Article 79 (Flammable and Combustible Liquids, specifically Special Options 7904), Standard of the International Fire Code and all applicable codes.
 8. "Hazard to air navigation" means an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
 9. "Height" for the purpose of determining the height limits in all zones set forth in this chapter and shown on the airport overlay zoning district map "A", the datum shall be mean sea level elevation unless otherwise specified.
 10. "Horizontal surface" means a horizontal plane 150 feet above the established airport elevation.
 11. "Larger than utility runway" means a runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft.
 12. "Nonconforming use" means any preexisting structure, object of natural growth, or use of land, which is inconsistent with the provisions of this chapter.
 13. "Nonprecision instrument runway" means a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight in nonprecision instrument approach procedure has been approved or planned.
 14. "Obstruction" means any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in KCC 17.58.050.
 15. "Person" means an individual, firm, partnership, corporation, company, association, joint stock association or government entity. "Person" includes a trustee, a receiver, an assignee, or a similar representative.
 16. Precision Instrument Approach. The precision instrument approach is designed to provide an approach path for exact alignment and descent of an aircraft on final approach to a runway.
 17. Precision Instrument Runway 29. The precision approach is a 50,000-foot-long trapezoid that is 1,000 feet wide at the point where it meets the primary surface. It has a 50:1 slope for the first 10,000 feet and a slope of 40:1 for the remaining 40,000 feet. The approach surface is 16,000 feet wide at the outermost point.
 18. "Primary surface" means a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. For military runways or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in KCC 17.58.040. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
 19. "Runway" means a defined area on an airport prepared for landing and takeoff of aircraft along its length.

20. "Structure" means an object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.
21. Transitional Surfaces. These surfaces extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each one foot vertically from the sides of the conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90-degree angles to the extended runway centerline.
22. "Tree" means any object of natural growth.
23. "Utility runway" means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight or less.
24. "Visual runway" means a runway intended solely for the operation of aircraft using visual approach procedures. (Ord. 2007-22, 2007; Ord. 200110 (part), 2001)

17.58.040A Airport overlay zoning district: Kittitas County Airport (Bowers Field).

In order to carry out the provisions of this chapter, there is hereby created an airport overlay zoning district that is composed of the following surface and safety zones for Kittitas County Airport (Bowers Field). The zones cover a geographic area that is affected by airport activities and are defined on the basis of factors including, but not limited to, aircraft noise, aircraft flight patterns, airport safety zones, local circulation patterns and area development patterns. The boundaries of the airport surface and safety zones are shown on airport overlay zoning district Map "A" - "Part 77" and Map "B" - "Airport Safety Zones", which are attached hereto and incorporated by reference, and which shall also be on file and open for inspection in the Kittitas County Community Development Services, Kittitas County Public Works department, and the city of Ellensburg community development department. The surface and safety zones are overlaid on top of the existing underlying zoning, which remains in full force and effect. Where the requirements imposed by the surface and safety zones conflict with the requirements of the underlying zoning, the more restrictive requirement shall be enforced.

1. Surface Zones. In order to carry out the provisions of this chapter, there are created and established certain surface zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Kittitas County Airport (Bowers Field). Such zones are shown on Kittitas County Airport (Bowers Field) overlay zoning map "A", as amended. Within each of the surface zones there are hereby established certain height restrictions for structures and trees. The surface zones are established and defined as follow:
 - a. Runways 07, 25, and 11, Larger than Utility with a Visibility Minimum Greater than Three-Fourth Mile Nonprecision Instrument Approach Zone. The 500-foot inner edge coincides with the width of the primary surface and slopes 34 feet outward for each one foot upward beginning at the end of and at the same elevation as the primary surface and expands to a horizontal distance of 3,500 feet at a horizontal distance of 10,000 feet along the extended runway centerline. Its centerline is the continuation of the runway centerline as depicted on map "A".

Height Restrictions: No object shall penetrate the imaginary line created by a slope 34 feet outward for each one foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
 - b. Runway 29, Larger than Utility with a Visibility Minimum Lower than Three-Fourth Mile Precision Instrument Approach Zone. The 1,000-foot inner edge of this approach zone coincides with the width of the primary surface. The approach zone expands uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the

continuation of the centerline of the runway as depicted on map "A".

Height Restrictions: No object shall penetrate the imaginary line created by a slope 50 feet outward for each one foot upward for the first 10,000 feet of this zone and 40 feet outward for each one foot upward for the remaining 40,000 feet of this zone.

- c. Transitional Zones. This zone is defined by a slope seven feet outward for each one foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 139 feet above mean sea level.

Height Restrictions: No object shall penetrate the imaginary line created by a slope seven feet outward for each one foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Further, where the precision instrument runway approach zone projects beyond the conical zone, no object shall penetrate the imaginary line created by a slope seven feet outward for each one foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90degree angles to the extended runway centerline.

- d. Horizontal Zone. The zone is established at 150 feet above the airport elevation or at a height of 1,916 feet above mean sea level by swinging arcs of 5,000 feet radial for all runways designated utility or visual and 10,000 feet for all other runways from the centers of the primary surface of each runway and connecting adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

Height Restrictions: No object shall penetrate the imaginary horizontal line created at 150 feet above the airport elevation or at a height above the airport of 1,916 feet above mean sea level.

- e. Conical Zone. The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from for a horizontal distance of 4,000 feet as depicted in map "A".

Height Restrictions: No objects shall penetrate the imaginary line created by a slope 20 feet outward for each one foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height up to 3,500 feet above the surface of the land.

2. Safety Zones. In order to carry out the provisions of this chapter and to promote land use compatibility on lands within and adjacent to and in the vicinity of the Kittitas County Airport (Bowers Field), there are created and established certain safety zones. Such safety zones are shown on Kittitas County Airport (Bowers Field) overlay zoning district map "B", as amended. Within each of the safety zones, certain land use limitations are established and certain development standards are imposed in addition to the land uses and development standards of the underlying zoning. Where the requirements imposed by these safety zones conflict with the requirements of the underlying zoning, the more restrictive requirement shall be enforced. The safety zones are established and defined as follows:

- a. Runway Protection Zone 1. An area extending beyond the centerlines of runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #1). This zone begins from the outer boundaries of the primary surface, 200 feet from the ends of the runways and extends out 1,700 feet to its widest point, which measures 1,010 feet across, 505 feet on either side of the runway centerline.
- b. Inner Safety Zone 2. An area extending beyond the centerlines of runways 11, 29, 07, and 25 as depicted in map "B" (shaded area #2). This zone begins at the end of the runway protection zone 1 and extends out 2,800 feet, The zone measures 1,010 feet across, 505 feet on either side of the runway centerline.
- c. Inner Turning Zone 3. A fan shaped area extending beyond the center lines of runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #3). This zone

begins at the primary surface, 200 feet from the end of the runway centerline and extends out with a 60-foot radius arc on either side of the runway centerline to 4,500 feet and connects to the centerline of the inner safety zone with sweeping arcs.

- d. Outer Safety Zone 4. Area extending beyond the centerlines of runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #4). This zone begins at the end of the inner safety zone and extends out 3,000 feet. The zone measures 1,000 feet across, 500 feet on either side of the runway centerline.
- e. Sideline Zone 5. An area adjacent to runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #5). This zone begins from the outer boundaries of the primary surface, and extends out 1,000 feet perpendicular to the primary surface and connects to the 60-degree sector of the inner turning zone.
- f. Airport Operations Zone 6. This zone is depicted on map "B" (shaded area #6) and begins from the outer boundaries of the sideline zone and extends out 5,000 feet perpendicular to the primary surface and connects to the 60-degree sector of the inner turning zone. (Ord. 2007-22, 2007; Ord. 2001-10 (part), 2001)

17.58.040B Airport overlay zoning district: Easton State, Cle Elum Municipal, and DeVere Field.

In order to carry out the provisions of this chapter, there is hereby created an airport overlay zoning district that is composed of the following surface and safety zones for the Easton State, Cle Elum Municipal and DeVere Field. The zones cover a geographic area that is affected by airport activities and are defined on the basis of factors including, but not limited to, aircraft noise, aircraft flight patterns, airport safety zones, local circulation patterns and area development patterns. The surface and safety zones are overlaid on top of the existing underlying zoning, which remains in full force and effect. Where the requirements imposed by the surface and safety zones conflict with the requirements of the underlying zoning, the more restrictive requirement shall be enforced. With the exception of those necessary and incidental to airport operations, no uses shall be permitted that allow buildings, structures, vegetation or other development that penetrates the imaginary air surfaces described below. As part of this section, Kittitas County recognizes the current planning effort being undertaken by the City of Cle Elum for the Cle Elum Municipal Airport, and anticipates that at the time of completion of such efforts such plans shall be incorporated and identified in this code.

1. Surface Zones. In order to carry out the provisions of this chapter, there are created and established certain surface zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Kittitas County Airport (Bowers Field). Such zones are shown on Kittitas County Airport (Bowers Field) overlay zoning map "A", as amended. Within each of the surface zones there are hereby established certain height restrictions for structures and trees. The surface zones are established and defined as follow:

Approach Zone. A surface longitudinally centered on the extended runway centerline.

Visual Runways. The 500-foot inner edge coincides with the width of the primary surface and slopes 20 feet outward for each one foot upward beginning at the end of and at the same elevation as the primary surface and expands to a width of 1,250 feet at a horizontal distance of 5,000 feet along the extended runway centerline.

Nonprecision Instrument Approach Zone. The 500-foot inner edge coincides with the width of the primary surface and slopes 34 feet outward for each one foot upward beginning at the end of and at the same elevation as the primary surface and expands to a width of 3,500 feet at a horizontal distance of 10,000 feet along the extended runway centerline. Its centerline is the continuation of the runway centerline as

depicted on map "A".

Precision Instrument Approach Zone. The 1,000-foot inner edge of this approach zone coincides with the width of the primary surface and slopes 50 feet outward for each one foot upward for the first 10,000 feet of this zone and 40 feet outward for each one foot upward for the remaining 40,000 feet of this zone. The zone begins at the end of and at the same elevation as the primary surface. The approach zone expands uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway as depicted on map "A".

Transitional Zones. This zone is defined by a slope seven feet outward for each one foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 139 feet above mean sea level. Where the precision instrument runway approach zone projects beyond the conical zone, no object shall penetrate the imaginary line created by a slope seven feet outward for each one foot upward beginning at the sides of and the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90degree angles to the extended runway centerline.

Horizontal Zone. The zone is established at 150 feet above the airport elevation by swinging arcs of 5,000 feet radial for all runways designated utility or visual and 10,000 feet for all other runways from the centers of the primary surface of each runway and connecting adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

The established airport elevations for airports in Kittitas County are as follows:

- Kittitas County Airport (Bowers Field) - 1,916 feet above mean sea level
- Easton State Airport - 2221 feet above mean sea level
- DeVere Field - 1838 feet above mean sea level
- Cle Elum Municipal - 1945 feet above mean sea level

Conical Zone. The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from for a horizontal distance of 4,000 feet as depicted in map "A".

Height Restrictions: No objects shall penetrate the imaginary line created by a slope 20 feet outward for each one foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height up to 3,500 feet above the surface of the land.

2. Safety Zones. In order to carry out the provisions of this chapter and to promote land use compatibility on lands within and adjacent to and in the vicinity of the Kittitas County Airport (Bowers Field), there are created and established certain safety zones. Such safety zones are shown on Kittitas County Airport (Bowers Field) overlay zoning district map "B", as amended. Within each of the safety zones, certain land use limitations are established and certain development standards are imposed in addition to the land uses and development standards of the underlying zoning. Where the requirements imposed by these safety zones conflict with the requirements of the underlying zoning, the more restrictive requirement shall be enforced. The safety zones are established and defined as follows:
 - a. Runway Protection Zone 1. An area extending beyond the centerlines of runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #1). This zone begins from the outer boundaries of the primary surface, 200 feet from the

- ends of the runways and extends out 1,700 feet to its widest point, which measures 1,010 feet across, 505 feet on either side of the runway centerline.
- b. Inner Safety Zone 2. An area extending beyond the centerlines of runways 11, 29, 07, and 25 as depicted in map "B" (shaded area #2). This zone begins at the end of the runway protection zone 1 and extends out 2,800 feet. The zone measures 1,010 feet across, 505 feet on either side of the runway centerline.
 - c. Inner Turning Zone 3. A fan shaped area extending beyond the center lines of runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #3). This zone begins at the primary surface, 200 feet from the end of the runway centerline and extends out with a 60-foot radius arc on either side of the runway centerline to 4,500 feet and connects to the centerline of the inner safety zone with sweeping arcs.
 - d. Outer Safety Zone 4. Area extending beyond the centerlines of runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #4). This zone begins at the end of the inner safety zone and extends out 3,000 feet. The zone measures 1,000 feet across, 500 feet on either side of the runway centerline.
 - e. Sideline Zone 5. An area adjacent to runways 11, 29, 07, and 25 as depicted on map "B" (shaded area #5). This zone begins from the outer boundaries of the primary surface, and extends out 1,000 feet perpendicular to the primary surface and connects to the 60-degree sector of the inner turning zone.
 - f. Airport Operations Zone 6. This zone is depicted on map "B" (shaded area #6) and begins from the outer boundaries of the sideline zone and extends out 5,000 feet perpendicular to the primary surface and connects to the 60-degree sector of the inner turning zone. (Ord. 2007-22, 2007)

17.58.050 Uses, development requirements and restrictions.

1. General Development Requirements and Restrictions Applicable to All Zones.
 - a. Underlying Zoning Requirements. In addition to the airport overlay zoning district development requirements and restrictions set forth in subsections (A)(2) through (9) of this section and in the table in subsection B of this section, all uses and activities are at all times subject to the requirements of the underlying zoning district. Where the requirements and restrictions imposed by the airport overlay zoning district surface and safety zones conflict with the requirements of the underlying zoning district, the more restrictive requirement shall be applied.
 - b. Pre-annexation/Annexation. Once the parcel is annexed into the Ellensburg city limits, the parcel shall adopt by reference the density requirements of the city of Ellensburg.
 - c. Height. All uses shall be subject at all times to the height restrictions set forth in KCC 17.58.040(A).
 - d. Signal and Radio Communication Interference. Electrical interference with navigational signals or radio communication between the airport and aircraft is prohibited and will be regulated in accordance with rules and regulations promulgated and enforced by the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA) regulations.
 - e. Lighting and Glare. Activities or uses that create lighting which make it difficult for pilots to distinguish between airport lights and non-airport lights or that create glare in the eyes of pilots using the airport are prohibited. All outdoor lighting fixtures shall be arranged and shielded so that area lighting shall not shine into the sky.
 - f. Visibility. Activities or uses that create excessive amounts of dust, smoke, or other emissions that may result in impairment of visibility in the vicinity of the airport are discouraged and will be regulated in accordance with rules and

regulations promulgated and enforced by the Washington State Department of Ecology under the Clean Air Act and other state and federal regulations.

- g. Large Bodies of Water. Activities or uses that create large areas of standing water are discouraged and shall be reviewed and regulated in accordance with the provisions set forth in the county's State Environmental Policy Act (SEPA) regulations as set forth in Chapter 15.04 KCC.
- h. Flammable and Combustible Material. Flammable and combustible liquids and specifications for fuel storage shall be in accordance with the International Fire Code and all applicable codes as adopted in KCC Title 14, Buildings and Construction.
- i. Noise Insulation. Noise insulation for new structures shall be in accordance with the International Building Code and the Washington State Energy Code as adopted in KCC Title 14, Buildings and Construction.
- j. Subdivision. When any division of land including short plats, plats, cluster subdivisions, and planned unit developments, occur on any land within the airport overlay zoning district safety zones 1 through 6, a note located on the first page of the plat, shall be recorded with the county auditor as follows:

This property is located within the Airport Overlay Zoning District in which a variety of airport aviation activities occur. Such airport aviation activities may impact the use of your property.

2. Use Table.

Note: All aviation uses are acceptable only on airport property.

Airport Overlay Zones	Applicable uses
Zone 1 (Runway Protection Zone)	1. Land uses, which by their nature will be relatively unoccupied by people should be encouraged (mini-storage, small parking lots, etc.) 2. Schools, play fields, hospitals, nursing homes, and churches are prohibited.
Zone 2 (Inner Safety Zone)	1. Schools, play fields, hospitals, nursing homes, and churches are prohibited. 2. Outside of the existing Ellensburg Urban Growth Area (UGA) the average density will be one dwelling unit per three acres on the property at the date of adoption of this ordinance [July 17, 2001]. 3. Inside the existing Ellensburg Urban Growth Area (UGA) the average density will be one dwelling unit per one acre on the property at the date of adoption of this ordinance [July 17, 2001].
Zone 3 (Inner Turning Zone)	1. Schools, play fields, hospitals, nursing homes, and churches are prohibited. 2. Flammable and combustible liquids and specifications for fuel storage shall be in accordance with Articles 52 and 79, the International Fire Code (IFC) standard, and applicable codes. 3. Outside of the existing Ellensburg Urban Growth Area (UGA) the average density will be one dwelling unit per three acres on the property at the date of adoption of this ordinance [July 17, 2001].

4. Inside the existing Ellensburg Urban Growth Area (UGA) for lands zoned Agricultural - 3 the average density will be one dwelling unit per three acres on the property at the date of adoption of this ordinance [July 17, 2001].
5. Inside the existing Ellensburg Urban Growth Area (UGA) for lands zoned Urban Residential or Rural Residential the average density will be one dwelling unit per one acre on the property at the date of adoption of this ordinance [July 17, 2001].

Zone 4
(Outer Safety Zone)

1. Schools, play fields, hospitals, nursing homes, and churches are prohibited.
2. Outside of the existing Ellensburg Urban Growth Area (UGA) the average density will be one dwelling unit per three acres on the property at the date of adoption of this ordinance [July 17, 2001].
3. Inside the existing Ellensburg Urban Growth Area (UGA) for lands zoned Urban Residential or Rural Residential the average density will be one dwelling unit per one acre on the property at the date of adoption of this ordinance [July 17, 2001].

Zone 5
(Sideline Zone)

1. All aviation related uses are permitted.
2. Schools, play fields, hospitals, nursing homes, and churches are prohibited.

Zone 6
(Airport Operations Zone)

1. All aviation related uses are permitted within airport property.
2. Outside of the existing Ellensburg Urban Growth Area (UGA) the average density will be one dwelling unit per three acres on the property at the date of adoption of this ordinance [July 17, 2001].
3. Inside the existing Ellensburg Urban Growth Area (UGA) the average density will be one dwelling unit per one acre on the property at the date of adoption of this ordinance [July 17, 2001].

(Ord. 2007-22, 2007; Ord. 2001-10 (part), 2001)

17.58.060 Permits.

1. Future Uses. Except as specifically provided in subsections (A)(1), (2), and (3) of this section, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone created unless a permit therefore has been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree is consistent with the provisions of this chapter. No permit for a use inconsistent with the provisions of this chapter shall be granted unless a variance has been approved in accordance with subsection D of this section.
 - a. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground except when, because of terrain, land contour, or

- topographic features, such tree or structure would extend above the height limits prescribed for such zones.
- b. In areas lying within the limits of the approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.
 - c. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.
 - d. As a condition for approval of new development within the approach surfaces or safety zones a notice shall be recorded with the county auditor prior to final approval of new subdivisions, short subdivisions, building permits, conditional use permits, special use permit or other similar permits, unless said notice is already recorded on the property. Said notice shall state: "This property is located adjacent to an airport and routinely subject to overflight activity by aircraft using the airport; residents and tenants may experience inconvenience, annoyance, or discomfort from noise, smell or other effects of aviation activities."
2. Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation, than it was on the effective date of the ordinance codified in this chapter or any amendments thereto or than it is when the application for a permit is made.
 3. Nonconforming Uses Abandoned or Destroyed. Whenever the airport manager, or his or her designee, determines that a nonconforming or structure has been abandoned or more than eighty percent torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such structure to exceed the applicable height limit or otherwise deviate from the zoning regulations.
 4. Variances. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this chapter, may apply to the board of adjustment for a variance from such regulations. The application for variance shall be accomplished by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this chapter. A copy of the variance application shall be forwarded to the Kittitas County airport manager by the Kittitas County Community Development Services department consistent with the notification procedures under KCC Title 15A.
 5. Obstruction Marking and Lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this chapter, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary.
 6. Nothing in this chapter shall diminish the responsibility of project proponents to submit a Notice of Construction or Alteration to the Federal Aviation Administration if required in accordance with Federal Aviation Regulations Part 77, "Objects Affecting Navigable Airspace". (Ord. 2007-22, 2007; Ord. 2001-10 (part), 2001)

17.58.070 Nonconforming use - Regulations not retroactive.

The regulations prescribed in this chapter shall not be construed to require the removal,

lowering, or other change or alteration of any structure or tree not conforming to the regulations at the effective date of the ordinance codified in this chapter, nor shall such be construed to require any change in the construction or alteration of any structure or tree which was begun prior to the effective date of the ordinance codified in this chapter, and which is diligently being prosecuted. (Ord. 2001-10 (part), 2001)

17.58.080 Violations and enforcement.

It shall be the duty of the code enforcement official of the Kittitas County building department to administer and enforce the regulations prescribed in this chapter. (Ord. 2001-10 (part), 2001)

17.58.090 Appeals.

Any person aggrieved, by any order, requirement, decision or determination made by an administrative official in the processing of any application made under this chapter or in the actual decision made as required by this chapter may appeal to the board of adjustment as provided in RCW 14.12.190. (Ord. 2001-10 (part), 2001)

17.58.100 Judicial review.

Any person aggrieved, or any taxpayer affected, by any decision of the board of adjustment, may appeal to the circuit court as provided in Section III of Chapter 12 of the Public Laws of the State. (Ord. 2001-10 (part), 2001)

17.58.110 Conflicting regulations.

Where there exists a conflict between any of the regulations or limitations prescribed in this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail. (Ord. 2001-10 (part), 2001)
