

WITH CONDITIONS

(Verbatim transcript)

Chairman Wubneh: We'll move on to Old Business which is a public hearing on a request for a variance from the height limitations of the Airport Overlay to erect two temporary construction cranes. The applicant, Brasfield & Gorrie, Inc., has requested a variance from the height standards of the Airport Overlay zone, Section 9-3-5 of the Greenville City Code. The request is for a variance to erect two temporary construction cranes of a 47 foot and 67 foot above the maximum height standard of 177 feet above mean sea level. The property is located at 520 Moyer Boulevard (the proposed new Central Utility Plant which will serve the new Pitt County Memorial Hospital Heart Center). The property is further identified as being Tax Parcel Numbers 29138 and 29139. I now open the public hearing on this case and those wishing to speak in favor or against this case, please come and get sworn. Mr. Laughlin would you give us a preliminary report.

Mr. Seth Laughlin: Yes sir. Good evening Dr. Wubneh and Board members. As Dr. Wubneh stated Brasfield and Gorrie, Inc. desire a variance from Section 9-3-5 of the Greenville City Code which regulates height standards in the Airport Zoning Overlay. Zoning of the property is MI, Medical Institutional. The Airport Zone establishes the maximum height at this location to be 177 feet above sea level. The surrounding development to the north is the Ronald McDonald House, to the south is hospital parking, MI, Medical Institutional. To the east is the hospital zoned Medical Commercial and to the west is a nursing home zoned Medical Institutional. Description of the property. The new central utility plant which will front the rerouted Moyer Boulevard. Airport zoning limits the height of any structure to 177 feet above mean sea level. One of the proposed cranes will extend to a height of 224 feet above mean sea level or 47 feet above the height limit. The second proposed crane will extend to a height of 244 feet above mean sea level or 67 feet above the height limit. The property is located within Vision Area "F" as designated by the Comprehensive Plan. Management actions for Vision Area "F" supports the increase in number and intensity of medical related uses. The Land Use Plan Map recommends Medical Core for the subject property. Notice was mailed to the adjoining property owners on August 10, 2006. Notice of the public hearing was published in the Daily Reflector on August 14th and 24th of 2006. As you all know the variance criteria is Reasonable Return, Unique Circumstances, Hardship by Applicant's Action, General Purpose of the Ordinance and Public Safety and Welfare. Planning staff does not object to the requested variance provided that the

Federal Aviation Administration and the Pitt-Greenville Airport Manager have no objections. FAA did return reports on both cranes which I handed out to you all earlier. They have no objections nor does the Pitt-Greenville Airport Manager. At this time I'd like to ask that the Findings of Fact be entered into the record. I'll be glad to answer any questions. I think Bill wanted to give a background.

Applicant: Brasfield & Gorrie, Inc

Request: The applicant, Brasfield & Gorrie, Inc desires a variance from Section 9-3-5 of the Greenville City Code, which regulates height standards within the Airport Zoning Overlay to allow two temporary construction cranes of 47 feet and 67 feet above the height limit.

Location: The property is located at 520 Moye Blvd. (the proposed new Central Utility Plant which will serve the new Pitt County Memorial Hospital Heart Center). The property is further identified as being Tax Parcel Numbers 29138 and 29139.

Zoning of Property: MI (Medical Institutional)
The Airport Zone establishes the maximum height at this location to be 177' above mean sea level.

Surrounding Development:

Zoning

North: Ronald McDonald House	MI (Medical Institutional)
South: Hospital Parking	MI (Medical Institutional)
East: Hospital	MCH (Medical Heavy Commercial)
West: Nursing Home	MI (Medical Institutional)

Description of Property:

The new Central Utility Plant which will front the rerouted Moye Blvd. Airport Zoning limits the height of any structure to 177' above mean sea level. One of the proposed cranes will extend to a height of 224' above mean sea level or 47' above the height limit. The second proposed crane will extend to a height of 244' above mean sea level or 67' above the height limit.

Comprehensive Plan:

The property is located within Vision Area “F” as designated by the Comprehensive Plan. Management actions for Vision Areas “F” supports the increase in number and intensity of medical related uses. The Land Use Plan Map recommends Medical Core for the subject property.

Notice:

Notice was mailed to the adjoining property owners on August 10, 2006. Notice of the public hearing was published in the Daily Reflector on August 14, 2006 and August 24, 2006.

Variance Criteria:

The Board of Adjustment must find in favor of the applicant on each criteria in order to grant the requested variance.

1. Reasonable Return – The applicant could not comply with the literal terms of the ordinance and still secure a reasonable return or make reasonable use of the property.
2. Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicant’s land.
3. Hardship by Applicant’s Action - The hardship is not the result of the applicant’s own action.
4. General Purpose of the Ordinance – If granted, the variance would be in harmony with the general purpose and intent of the ordinance and would preserve its spirit.
5. Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice.

Staff Comments:

Planning staff does not object to the requested variance provided that the

Federal Aviation Administration and the Pitt Greenville Airport Manager does not have any objections.

Mr. Bill Little: Good evening Board. As a way of ordinal, regulatory and statutory background concerning the Airport Overlay. First, the North Carolina General Statutes 63.31 established an Model Airport Zoning Act which authorized cities where there was an airport to establish an overlay district. Pursuant to that Chapter 3, Title 9, of the Greenville City Code noted as the Pitt-Greenville Airport Zoning Ordinance, the City of Greenville established an airport zone. With that zone it notes in paragraph 9-3-1, number 3, Airport Hazard. Any object violating the Federal Aviation Regulation part 77, navigable airspace depicted on the "Airport Hazard Zoning Map". 14 CFR77, part 77 notes that the FAA makes the determination as to what or not an object within the airspace as defined by the CFR, part 77 is an air hazard. First the Airport Authority says thou shalt not build above a certain height. Variances are authorized by the Statutes and by our ordinances. A variance relates to a specific request. The applicant was before you previously on another variance request plus as the Commission well knows there have been other variance request for this area. However, the law says that you may only consider the application as it stands on its own not what may have happened in the past. Based on that it says the city ordinance declares that the height can not create a hazard and the FAA is the determinater as to whether or not there is a hazard and determination of Public Safety and Welfare is part of the elements that must be decided on whether a variance should or should not be granted. Ordinarily, an oral report or a letter is not admissible evidence before you, however, the FAA in a standard course of business issues determinations in this format and as such is a business record. As a business record it is an exception to what we call the hearsay rule and is admissible for your consideration tonight. Also note in the letter that the FAA notes that there is an appeal available to anyone who may be affected by their decision. If you get to the point where you are going to vote on approval of the variance you must add a condition that the variance would be granted as long as FAA approval is present. You also must make a finding of fact as to whether or not the applicant has complied with the requirements of part 77 regarding the ACUZ issues which is the compatibility use zone and that includes the height variation. Are there any questions on the ordinal, regulatory and statutory peripheries for the variance?

Ms. Safford-White: I have a question.

Mr. Little: Yes madam.

Ms. Safford-White: You indicated that we have to look at it as what is before us. We can't go back and look at what we have previously.

Mr. Little: That is correct. Just because it was granted in the past does not mean that it's appropriate automatically under this scenario. It has to stand on its own feet, on its own merit, so you would have to apply the rules just as if this was a case of first impression. Ignore the fact that there may be variances, there may be other issues. I think that there may be presentations talking about other buildings that are already in place that may be above that mean level. That is not relative to your discussion we have to address it solely on the application that is before you.

Mr. Estes: I have a question. When we voted previously I recall two cranes. Are we voting now on a third crane? Or are we looking at this entire request as a brand new...

Mr. Little: This is a brand new. I think that you voted on one crane before and this is two.

Mr. Estes: One crane before.

Mr. Little: This is for two tonight.

Mr. Estes: Then that cleared up everything. Thank you.

Mr. Little: Any other questions? Yes sir.

Dr. Wubneh: The FAA approval does it have a time restriction? You said as long as FAA approval continues so when does that terminate or is it FAA that determines..

Mr. Little: There is really no time period in the act. If someone objects, the airport objects because let's say they get a new type of airplane that starts, let's just use for example hypothetically the new jet service that will start. If for some reason that jet service cannot operate because of a hazard created by the variance that might be requested. Then the airport as well as the air carrier could appeal at that time to the FAA and request that the determination that no air hazard be reviewed and rescinded. If the FAA agrees then it would be rescinded at that point and the variance because there was a condition that would lapse. It would be rescinded also.

Any other questions? Thank you.

Dr. Wubneh: Any other questions for the city? Ms. Bellis.

Ms. Bellis: The FAA doesn't have to be here in person and it says that we have to have no objections from the Airport Manager. Does the Airport Manager have to be here or could we take...

Mr. Laughlin: He was copied in the review of the application and he returned comments stating that he has no problems.

Mr. Little: We cannot take his absence or his oral statement as admissible evidence. It's just as if somebody said "well my neighbor objects but my neighbor is not here". It has to be construed as a neutral factor so it may not be considered in your deliberation as to whether he opposes it or doesn't oppose it.

Ms. Bellis: That's a condition.

Mr. Little: (Unclear) based on the merits of what's there.

Ms. Bellis: But that would be a condition.

Mr. Little: You could take reasonable inferences by his absence. You could make a reasonable inferences by his absence but you can't say definitively that he does not object based on oral representation. That would not be admissible as relevant, that would be hearsay. You may take a persons absence as (unclear).

Ms. Bellis: But we could make that a condition?

Mr. Little: You could make that as a continuing condition that there be no objection by the Airport Manager.

Dr. Wubneh: Is that synonymous with FAA? Because we know that there is no... as long as the condition by the FAA continues. Are we adding another condition...

Mr. Little: You could, the Board could add that as an additional condition. That is up to you and your vote if you get to that point. We're maybe jumping the gun but if you get down to that point you could add those as conditions. I don't want to pre-

suppose that there is approval or denial at this point. These may be just questions that we have because this is different from any other variance or any special use that would normally come because we have to have an outside agency involved.

Dr. Wubneh: Would you go over again why this Board is hearing it as a variance because when the variance criteria are specific in respect to Hardship. Why are we hearing this? Is this a hardship caused by what?

Mr. Little: That may be a question to ask the applicant. It's their position to answer why. They have to establish for you that they satisfy the criteria.

Dr. Wubneh: I was referring to in reference to the statutes that you cited from the North Carolina Legislation and one from the city, why it created the airport zone and there were specific statutes that you referred to.

Mr. Little: The Statutes say that the city may create an airport overlay zone. Then the statutes say that a municipality can in its Zoning Board of Adjustments approve a variance from a prohibited or prescribed use as long as it meets the criteria. It has to meet the criteria. A statement "I want one because" that's not sufficient. They have to be able to present to you the evidence satisfactory to yourselves of the elements.

Chairman Wubneh: Mr. Harwell.

Mr. Harwell: It is not relevant and I understand that but for information purposes only we have had such a case as this before us. I do not remember the time frame of that case when it expires. Could you advise me when that variance expires?

Mr. Little: When that variance expires? The variance would expire when it's no longer needed.

Mr. Harwell: Well, there's a definite in here, there's a definite time period. This determination expires on February 17th, 2008. I cannot remember what the other one was.

Mr. Little: The other one may have the same. I do not have that one with me.

Mr. Harwell: I'll find out later, that's okay.

Mr. Little: It may have a definitive term but your condition is that, if it gets to that

part, as long as there is FAA approval in place so it doesn't matter if the FAA letter expires today, tomorrow or a year and a half from now. If somebody would come in to object that they rescinded it, it wouldn't matter whether or not it expired on its own merits in 2008.

Mr. Harwell: Thank you sir.

Dr. Wubneh: Any other questions for the city? Would the applicant please come forward and tell us about your project or petition.

Mr. Bob Williford: Good evening to you. My name is Bob Williford. I'm a Senior Project Manager with Brasfield & Gorrie. Brasfield & Gorrie is the construction manager for the new central utility plant that's being built for the expanding needs of Pitt County Memorial Hospital and new Heart Center. First of all, I'd like to thank you for hearing our application for a variance this evening and I've got several details to add to our application if you guys would like to hear them. Building the central utility plant safely requires us to use cranes. In fact we can't build this central utility plant without these cranes that we have requested. If we can't build the central utility plant then the Heart Center can't open. Our request is to use two cranes for a limited amount of time during the erection of the utility plant steel, frame and the concrete skin. I've attached to our application several site plans that show the relation between our site and the airport and the overlay that restricts our height. The first crane that we request to use will be 150 feet above ground level to the top of the boom. As I said this crane will be used to erect the concrete skin of the building and it will be used between October and January. This crane extends 47 feet above the inner horizontal height restriction requirement of the airport. The second crane we've request to use will be 170 feet above the ground level. It will be used to erect the structural steel frame of the building and it would be used between November and January. It would extend 67 feet above the inner horizontal height plain of the airport. I attached a drawing, a scale drawing, of these cranes, it's called Attachment 3 with our application. It shows the (unclear) of the size of the cranes that we're requesting and it shows the (unclear) of size of these cranes to an approved crane that you guys looked at several months ago. The crane on the left is a crane that is being used to erect the frame at the Heart Tower. You can see that our cranes are smaller, we're on an adjacent site. This drawing shows the maximum heights that these cranes will be operated at and it shows the relationship of those maximum heights to sea level. The FAA has performed an aeronautical study and has issued letters of determination confirming there is no hazard to air navigation for

both of our cranes. Copies of these letters have been provided to you and we have contacted Greenville Airport and Mr. Turcotte directly has confirmed that he has no objection to the use of the cranes. Understanding that we are working on a hospital campus with helicopters in the area, we're encroaching on a horizontal plain that's critical for commercial service, we're going to implement additional safety measures for these cranes beyond what the FAA requires. Both cranes will be used during daylight hours only. Both cranes will be equipped with red flashing lights and white strobe lights at the top of the boom. Also, each crane will have a orange-white checkered flag at the top of the boom. We will lower the boom of the crane at the end of work each day to 100 feet above ground level which will take us below that horizontal plain. If the variance is approved I just want to confirm that we will keep the Public Health, Safety and Welfare our top priority. We will comply with the FAA requirements, we will provide additional safety measures and we will limit the time that these cranes will be used on the site in our intrusion into protected air space. We appreciate your consideration and I'd like to ask if you have any questions for me.

Dr. Wubneh: Any questions for Mr. Williford?

Mr. Estes: Could you list those additional conditions that were above and beyond what the FAA listed. Something like a white strobe, a checkered flag and you said one or two other conditions.

Mr. Williford: The FAA, their conditional requirements are that the cranes are marked with a flag during the day time operations. If they are operated at night they require a red flashing light. What we're going to provide is a red flashing light during the day, a white strobe light during the day and night for both of those and the red and white checkered flag. We're going to lower the booms at night. We're only going to operate during day light hours.

Mr. Harwell: I have some questions sir. The white strobe gives me some concern. Is it approved by the FAA? I read the document that they published the FAA is rather strict on their marking requirements. They have absolute details, any additional markings may be a violation. You should give that serious consideration particularly the flying of flags, etc., that may not meet FAA requirements. The strobe, could be possible pilots flying in and the strobe could affect their vision. I give you some caution on that matter. I have a, how tall is the central utility plant design show?

Mr. Williford: 68 feet.

Mr. Harwell: Next question, what will you be doing during day light AFR conditions when instrument rules are in place and the ceiling is down below the level of these cranes?

Mr. Williford: Do you mean what will the cranes be doing or what will...

Mr. Harwell: What will the cranes be doing? Will they be operated during instrument flight conditions day light?

Mr. Williford: Yes sir, they will be operated during the day light hours.

Mr. Harwell: Are they on one of the flight paths to the main runway, (unclear) runway, which is

Mr. Williford: I'm not familiar with the flight paths of the airport. I know what I've seen on my site is the planes. We're southwest of the airport and the planes that I've seen approaching from the south are east of us. I've not seen a plane actually when over our site. Again, I'm not.

Mr. Harwell: It appears to me to be on, when you're landing on runway 20 that this, the instrument requirements are on missed approach to make a right turn, climbing right turn, essentially, over this facility as I understand it. I have some concerns with that. The next question that I have. You mentioned some dates, October through January and November through January, of what year?

Mr. Williford: 2006 and 2007.

Mr. Harwell: I notice that the determination by the FAA expires February 17, 2008.

Mr. Williford: Yes.

Mr. Harwell: What is your request time frame that you're making tonight?

Mr. Williford: My requested time frame is November through January or October through January. The FAA's...

Mr. Harwell: Of what year?

Mr. Williford: 2006, 2007.

Mr. Harwell: Have you read the submittal documents that were submitted to this Board?

Mr. Williford: Yes, I prepared them.

Mr. Harwell: You prepared them. Would you look in your package to the certification by a land surveyor.

Mr. Williford: Yes sir.

Mr. Harwell: I notice and I read and tell me if this is correct “Certification: I certify that the latitude of 35 degrees 36 minutes 29.83 seconds North and the longitude of 77 degrees 23 minutes 57.69 seconds West are accurate to within +/- 50 feet horizontally, and that the site stake elevation of 74 feet (NGVD 29) is accurate to within +/- 20 feet vertically.” That’s the largest +/- I’ve ever seen. 20 feet. Does that mean that the document submitted to the FAA are plus 20 feet?

Mr. Williford: I’m not a land surveyor. I’ll tell you what I know, what I’ve been told. The FAA requires 2C survey certification. This FAA 2C survey requires that the reference datum that’s used is NGVD 29. The National Geodetic Vertical Datum those points established nationally give the FAA some assurance that the reference elevations are +/- 20 feet. They take those datum’s and they assess the risk or they determine whether there’s a hazard based on a factor of safety in this national register of datum points. I know that our surveying has come miles and miles from where it use to be and I know that we have, we certainly control our elevations much, much tighter than that. We know the elevation is at 74 but the FAA requires these reference points and that is why it’s a national series of datum. That is how they are used.

Mr. Harwell: Plus or minus 20 feet is in the FAA regulations?

Mr. Williford: It says to use the NGVD 29 or and the NAD 83 and both of those reference datum’s have that condition.

Mr. Harwell: Where would you point me to that? In reference to 20 feet. I don't mean to belabor the point but 20 feet is (unclear) ceiling. That's a strange survey point and stranger than I've seen in 50 years of practice.

Mr. Williford: This is what I've been told that this is a national datum.

Mr. Harwell: I know the national datum, there're two, NGVD 29 and 83.

Mr. Williford: (Unclear) it's plus or minus 20 feet. Here it is.

Mr. Harwell: It is? You would certify to that?

Mr. Williford: Yes I would.

Mr. Harwell: Thank you very much.

Chairman Wubneh: Any other questions for the applicant?

Ms. Safford-White: I do have a question and this goes back to my question to Mr. Little. There is already a large crane over there. Could that crane not be used instead of requesting another one?

Mr. Williford: No, we're using our cranes the same time they are.

Ms. Safford-White: Okay.

Mr. Williford: It's a different company.

Ms. Safford-White: Okay. Thank you.

Chairman Wubneh: Any other questions for the applicant? Let me understand you correctly. What you are saying is that your request is only for '06 – '07, January '07. The FAA has been very generous to give you up to 2008. You're not concern if for one reason or another your project is delayed could be weather or whatever that's going to terminate the date that you requested?

Mr. Williford: (Nodded head to indicate Yes)

Chairman Wubneh: Any other questions? Thank you. Any one here in favor of the

application? Any one against the application? Mr. Laughlin what is the position of the city and what is your recommendation?

Mr. Laughlin: Dr. Wubneh, the Planning staff does not object to the requested variance.

Chairman Wubneh: Thank you. Members of the Board I now close the public hearing on this case and call for a discussion. Please keep your mike open.

Mr. Harwell: Concerning this I basically have the following comments. As dated in the record that it be day light only. (2) that the markings conform strictly with the FAA requirements. (3) that the dates for operation be from October of 2006 through January, 2007 (4) that the variance be granted only, the variance be contingent only as long as the Pitt-Greenville Airport Authority has no objections. That takes it out of Mr. Turcotte's lap and (5) only so long as the FAA approval is effective. That's my.

Chairman Wubneh: So how many do you have six? I hope Madam Secretary you have either picked up or it has been picked up (unclear) or Mr. Harwell can give us a written report. Your recommendation is that these conditions be included in the findings of fact?

Mr. Harwell: Yes sir.

Chairman Wubneh: Any more discussions members of the Board?

Mr. Estes: I did have one request that I like what Mr. Ward said about the condition regarding the acclamation from the Pitt-Greenville Airport. Could we get that in writing as well? A letter or something like that would be much easier for me to deal with. Right now we're inferring their support with their absence. I forget how you actually described it.

Mr. Little: If you were to request additional affirmative action on the part of the Pitt-Greenville Airport Authority then what would have to happen is the hearing would be continued until next month or a special call meeting by the Chair to have that either have a representative of the Airport Authority testify before the Board or a business record document similar to the FAA be introduced. That's your call as a Board. You can make that call to have it as a continued hearing for that purpose.

You can also, as I stated earlier, the fact that they're not here you may take all reasonable inferences from the evidence that is before you.

Mr. Hutchens: Mr. Chairman, I believe Mr. Harwell's condition that the continued approval by the Greenville Airport Authority will take care of that issue. Would it not Mr. Harwell?

Mr. Harwell: Probably.

Mr. Little: I think it would.

Mr. Brian Becker: If I could just add on that point with Mr. Turcotte over at the airport. I'm the attorney that the hospital asked to help advise the applicant on this matter. My understanding is, first of all, Jay Walton is here and testified before you'll at the last crane application. He was the point man with Mr. Turcotte and that was the case this time too. If you'll wanted to open the record back up to hear what Mr. Walton has to say about his discussions with Mr. Turcotte we'd be glad to do that.

Several individuals: That's hearsay.

Chairman Wubneh: As long as he's not here it's back to what we talked about.

Mr. Becker: Of course.

Chairman Wubneh: I think the condition that as long as the Airport Authority doesn't have any problem we should be able to address that.

Mr. Becker: Yes and I see a big difference the way that is worded between as long as there's no objection from the Airport versus as long as they affirm it. My understand is that Mr. Turcotte prefers not to even get, does not want to take an active role in these unless there is an objection. Meaning, I don't know that we could get him to voluntarily, to do an affirmation whereas if the hearing was continued to deal with that requirement we'd probably have to subpoena him.

Chairman Wubneh: I didn't interpret that to mean that we have to have an affirmation.

Mr. Becker: Yes.

Chairman Wubneh: The way I interpreted...

Mr. Becker: I think from Mr. Estes maybe.

Mr. Estes: That is correct because there are a lot of inferences and reasonable conclusions that we're trying to draw here and it would seem much easier if we had a letter or note or something like stating his position on it. He is our local expert. That's what I was looking for. I understand the concerns we'd lose a month, I don't want to go down that road either. We're just drawing a lot of conclusions here based on what's before us and I'm not really sure what he thinks so I was trying to cut to the quick and get that and that causes its own problems.

Mr. Becker: Yes sir. One of the things that was presented at the last crane application, I believe by Mr. Little, I think it was, was the pattern. One thing you can draw inference on is Mr. Turcotte's pattern of actions in the past on issues affecting the airport. I thought it was Mr. Little, maybe it was someone else, that explained that this is the way he does approach these things unless there is an objection he does not show up. I think the Board found that to be (unclear) to hear that. Again, I don't remember if it was from Bill or Dave Holec.

Chairman Wubneh: It's not going to help the Board to bring in terms of what Mr. Turcotte's affirmation, opposition or whatever the case, he is not here and we can not question him. Any statement regarding or his motive, thoughts or anything would not be helpful for this Board.

Mr. Becker: I guess the one thing I would close with is one thing that is a fact that was presented by the city is that Mr. Turcotte has been sent all the application materials including the FAA approvals so that is a fact.

Chairman Wubneh: I believe that was stated by the city.

Mr. Becker: Yes sir. So as an admissible fact tonight that Mr. Turcotte did receive these same materials. We do know that he is not here and we do know that he has not sent any written letter whatsoever.

Chairman Wubneh: In the presentation by the city that was noted there and I believe

the Board recognized that.

Mr. Becker: Yes sir. I just would ask that the Board would view it, that the condition that as long as the Airport, I think you said originally, as long as the Airport does not step in to oppose it that the variance will be approved.

Chairman Wubneh: Yes Mr. Harwell. That's why the Board is discussing it when you came in. Let's see what the decision of the Board would be. Yes Ms. Safford-White.

Ms. Safford-White: I agree with Mr. Harwell. I think that if we allow the Airport Authority to handle that that shouldn't be a problem.

Chairman Wubneh: Mr. Harwell is that...

Mr. Harwell: In the way I think I stated it the variance would continue as long as there is no objection by the Pitt-Greenville Airport Authority.

Ms. Safford-White: Right.

Chairman Wubneh: Does that satisfy Mr. , okay.

Mr. Estes: That will be fine.

Chairman Wubneh: Any other discussion members? Vote?

Mr. Estes: Yes.

Mr. Hutchens: Just one last thought, not so much to objection, but just an observation that many times before the Board that old bureaucratic rule "it's easier to ask for forgiveness than it is permission". I'm not saying that the plans of this intentionally were drawn up in violation but it certainly seems to be sloppy work to draw up a plan that is ultimately and not be aware that there was an FAA condition. This is not the first time we've had to deal with this kind of issue where someone in a sense missed planned and then we have to deal with a variance in order to deal with the apparentness of miss planning but that's just an observation.

Chairman Wubneh: Thank you. Any other discussion from the Board. Members of

the Board this is a variance request and I will now read the criteria. If you want a vote please stop me otherwise by your silence it is recognized that you are voting in favor of the applicant. I'll read the criteria Reasonable Return, Unique Circumstances, Hardship by the Applicants Action; General Purpose of the Ordinance, Safety and Welfare.

Mr. Harwell: Vote.

Chairman Wubneh: Okay, Safety and Welfare. We'll start with you.

Mr. Harwell: I vote negative against it.

Chairman Wubneh: I believe if you vote negative we need an explanation, correct?

Mr. Harwell: Yes sir. It penetrates the air space and therefore I think has some effect on the safety of incoming pilots and crew and passengers and it has potential for a crash outside the airport environment.

Chairman Wubneh: Mr. Estes, how do you vote?

Mr. Estes: I'm not sure which

Chairman Wubneh: Yes is in favor of the applicant, No is against the applicant on that specific criteria. We have addressed all four and we are on Safety and Welfare. I think what I'm going to do is vote first and then come back to, is that easier Mr. Estes. If you vote Yes, you are voting in favor of the applicant, if you vote No, you are voting against the applicant.

Mr. Estes: Yes.

Mr. Hutchens: Yes.

Chairman Wubneh: Chair votes Yes.

Ms. Bellis: Yes.

Ms. Safford-White: No.

Chairman Wubneh: Ms. Safford-White votes No. Mr. Wright.

Mr. Wright: Yes.

Chairman Wubneh: Mr. Wright votes Yes. Ms. Safford-White give us your explanation.

Ms. Safford-White: It appears to me that from my observation of working over there that you do have aircraft that come along that line. You have a crane that's there. It's going to cause a problem especially if there is a lot of fog and different things like that and you're operating during the day is going to create a problem. I know for a fact they fly through there because my office is right there and I see it all the time. I'm sorry No.

Chairman Wubneh: Okay. I believe Mr. Little do we continue here? I see two negative votes.

Mr. Little: You received two negative votes. You then have to make a formal vote on whether or not the application is approved or not based upon those two negative votes on one criteria. Remember if there are two negative votes on one criteria there can not be, it cannot pass.

Chairman Wubneh: That's correct. What I'm saying is do we....

Mr. Little: You have to have a formal vote on the application at this point. It's a pro-bono vote but it's a formal vote.

Chairman Wubneh: To approve it or not to approve it.

Mr. Little: That is correct.

Chairman Wubneh: We do not have to go into the finding of facts and conditions.

Mr. Little: You've already established your finding of fact.

Chairman Wubneh: The conditions I'm talking about.

Mr. Little: Conditions, that is correct. There are no conditions that can be attached because your finding of fact at this point are not sustainable. You now vote on, based upon your findings, as to the elements and your majority requirements, your 6 out of

7 which you would not be able to sustain (unclear) 2 negative votes. It's a pro-bono vote on the application.

Chairman Wubneh: This motion would be, given the fact that there are two negative votes on the criteria.

Mr. Little: Motion to approve the findings of fact.

Chairman Wubneh; Motion to approve the findings of fact.

Mr. Little: With the two votes and the reasons stated behind it are now a part of the findings of fact. That can be approved. You're approving the findings of fact with those additional findings. Those are your facts that you are finding.

Chairman Wubneh: I'm not sure if I understand. What we voted on was the criteria which sustained two negative votes.

Mr. Little: Two negative votes. You have, remember as you're going through your criteria those are part of your findings of fact and that establishes your findings of fact. Your findings of fact now include two additional facts that were there on that one element which created a negative vote, two negative votes there.

Chairman Wubneh: My question is do we move to the next step which is a motion to approve the findings of fact?

Mr. Little: As stated.

Chairman Wubneh: As stated.

Mr. Little: Correct.

Chairman Wubneh: Okay, that's basically what I was trying to do. Motion to approve the findings of fact. Keep in mind that we have the two negative votes that were sustained on criteria.

Mr. Hutchens: Move to approve.

Chairman Wubneh: Motion by Mr. Hutchens. Anyone second?

Mr. Wright: Second.

Chairman Wubneh: Second by Mr. Wright. All those in favor of approving the findings of fact indicate by saying "Aye". Opposed? Okay, motion to approve the petition.

Mr. Little: It's not required at this point because it failed to sustain

Chairman Wubneh: Thank You.

Mr. Little: The Board then just makes its decision. Just simply announce its decision.

Chairman Wubneh: The decision of the Board, as you know it has sustained two negative votes on one of the criteria and the decision is not to approve your application.

Mr. Becker: Mr. Chairman, may I speak?

Chairman Wubneh: Yes sir.

Mr. Becker: I'm an attorney so as an officer of the court I don't know if I need to be.

Chairman Wubneh: Give us your name.

Mr. Becker: Brian Becker. I'm licensed to practice law in North Carolina and Texas. Since this is a quasi-judicial proceeding one thing I would ask I would make a motion to reopen the Board consideration of this matter. The basis of the motion would be to address the safety concerns that two of the members have raised. One thing that I wanted to point out is that the larger crane next door, literally across Moye, is almost 7 stories taller than the two at issue tonight. That one has been there for approximately two months and will overlap these two cranes almost to the end of these two cranes being there. As you've seen in the newspapers, obviously if there was an incident regarding that big crane it would have been in the newspapers and there haven't been nothing there when that one rolled in place. I just wanted to make that motion on behalf of the applicant that the Board reconsider its decision

specifically to the two no votes to the Safety condition based upon what is a fact, the larger crane that is there.

Chairman Wubneh: I'm going to have to consult with our counselor. The Board has voted and made its decision whether or not we can reopen the case or...

Mr. Little: Yes you can based on that request. You can reopen, you can make a motion to reopen, second, simple majority vote. You can hear any additional information and the Board can vote to reconsider its decision based upon that additional information. Precedence being a case we had some time ago involving a restaurant. That will allow you to reopen, to reconsider additional matters that may or may not impact your statements. First off you'd have to have a vote. That would be a motion to reopen, reconsider.

Chairman Wubneh: Yes Mr. Harwell. There's a request for reopening the hearing.

Mr. Harwell: As I, memory serves me, my understanding of the previous FAA comments on the, I'm going to use the word "tall crane", in that comment and the period that crane was used or to be used they raised the circle to land minimums in that period of time. I don't see where this crane will be raising the circle to land minimums that's what gave me some concern and I asked a question when that one expired to see if there was an overlap on these cranes and I saw that if there was not an overlap and these cranes lasted longer that the circle to land minimums. What this means, as I understand it, is an airplane coming in to land on the IFR runway 20 and for some reason they could not land on that runway and that runway minimum is approximately 200 feet above runway surface. It's an IFR instrument runway where you can control both height and alignment while landing. If you couldn't land you'd have to make a turn and then come in on another runway and the FAA, in fact, on that high crane did raise the circle to land minimums. My other concern which I asked here was during instrument conditions, locally when it's foggy, this crane would still be there and that gave me some real safety concerns. My background is flight instructor, instrument instructor, multi-engine, land and single engine landing C. I do fly in and out have for many years the Pitt-Greenville Airport. We had two crashes there in the last 25 years. One was in the fog and therefore I know that the situation is here and that is why I make that comment. I would feel much more comfortable with this if they would put another criteria on that during instrument conditions that they would not have the crane up there.

Chairman Wubneh: Would that suffice (unclear)

Mr. Hutchens: I believe we have not yet reopened to discussion.

Mr. Harwell: I just commented on that.

Chairman Wubneh: I think first.

Mr. Little: Before the Board wants to do that could we take a recess. I may have that determination letter downstairs in my office which may be of help.

Chairman Wubneh: Is it the wish of the Board that we take a five minute recess. Okay, we'll take a five minute break and then convene again. Ladies and Gentlemen I think we can come back from our five minute break. There is a request to reopen the hearing and what I'd like is a motion from the Board to reopen.

Mr. Little: I think it's a combined motion to reopen and reconsider.

Chairman Wubneh: To reopen and reconsider. Thank you.

Mr. Wright: Motion.

Chairman Wubneh: Motion by Mr. Wright.

Mr. Hutchens: Second.

Chairman Wubneh: Second by Mr. Hutchens. All those in favor of reopening the case and hearing it please say "Aye". Opposed? Mr. Little.

Mr. Little: Thank you Dr. Wubneh. At the request of the Board the previous letter that was issued or the previous determination issued by the FAA in the previous variance request at this job site location which was issued on May 15, 2006 from the FAA Determination of No Air Hazard. At that time, that date of issue, there was no end date by that letter and that letter became a part of the record, it was a business record, as the record is tonight. It had an attachment to it, paragraph 2, it said "the temporary crane has the following affect on Pitt-Greenville. Circling minimum descent altitude all approach procedure increase from 580 feet to 620 feet AMSL. What that means is that during the, since there is no end date for this determination

letter that as long as this letter was in effect, which means as long as that crane was in place, then the descent would be adjusted upward. Once that crane comes down the descent altitude would revert back to its original 580 feet. As I indicated earlier to the Board that a variance request stands on its own feet. Just because there may have been issued a variance in the same location doesn't mean you have to approve this variance. It can be considered as a fact or as part of your discussion but it doesn't mandate. I did know if that was clear or not in the initial. It can be considered but it does not mandate its approval. You may consider it was approved and you may consider that it had a descent adjustment upward and it will remain in effect as long as the crane is up. If the crane stays up it's there. Once the crane comes down then the descent would be there. In this case, if you were to revote and approve and find there is no safety issue then you make as a condition that as long as this determination the one of May 15, 2006 is in affect with the change in, the increase of minimum descent altitude then this variance would be affect. Once it comes down they come down. Is there any other information that the Board desires?
Mr. Wright.

Mr. Wright: Say for instance we approve this variance with the other crane. If we approve it can they apply to the FAA and just say "well, you know it was something left out we got two cranes coming up" and they want to extend it over a period of time if they bring theirs down. Can they?

Mr. Little: Yes they can do that but they would have to come back to the Board and ask for an extension of their variance based upon that information and if necessary additional time. As you and I both know, rule of thumb, no construction project is completed on time. I've never seen one. The only ones I think were ever completed on time we had to go back and redo. Any other questions? Thank you.

Chairman Wubneh: Mr. Harwell any concerns that you have because I realize you

Mr. Harwell: The comments that I made before I think there were six. If we do this I would propose to add two more. (1) that the variance remain in affect so long as the previously approved variance granted to McCarthy-Loving crane on a FAA Determination of No Hazard Air Navigation dated May 15, 2006. That this remain only as long as that variance and that crane are on site. (2) That the crane not penetrate the 177 foot above sea level during the period that instrument flight metrological conditions are in affect. Meaning essentially for us flying folks that the airport beacon is going around and it is lighted during the day time.

Chairman Wubneh: So I believe we had six before and now we're adding two?

Mr. Harwell: Yes sir.

Chairman Wubneh: I'm not going to attempt to summarize (unclear) but I'm assuming they're in the record.

Ms. Stanley: Correct.

Chairman Wubneh: Okay, any other discussion?

Mr. Jim Bullock: My name is Jim Bullock. I'm special outside counsel to Pitt County Memorial Hospital. I would appreciate a few moments with some comments before you vote on this particular matter. This variance is critical to this project. I want to talk on a higher plane before you all take your vote here. You all know that this station is critical to supplying electricity to the \$86 million Heart Center. We're on a strict construction schedule. If the project is delayed it will be costly, I think you can appreciate that. I know this Board is concerned with the public safety and welfare. That is a mission of Pitt County Memorial Hospital. Public safety and welfare. It is unfortunate that the campus that we're trying to build, the flagship of eastern North Carolina is in the area of the airport but that is the nature of where it is at. The contractor here has implemented a number of safety features. As I said delays will be costly, it will create rescheduling. If you, the new two conditions that are added, the instrument flying is one that probably we could live with and perhaps some more testimony from the witnesses would be helpful to that condition, AFR conditions. The tying the two new cranes to the current existing crane is problematically and also costly and if that is a condition you wish to consider I would appreciate it if you would let us present some more testimony on the economics of that. That is a different crane company, a different project, a different contractor from this one. If it were all the same it might be easy to live with that condition but it's going to be burdensome and expensive. That tall crane is a very expensive operation we have up so this condition would add a good bit of cost. I would appreciate it if that was a condition you want to consider that we open up for some more testimony in that particular item. I'm hopeful that this Board would take into consideration the impact of this project, the critical nature of a delay of it and if we could try to reach some conditions in the public safety for everyone we would be much appreciative of that. We've got the Moye changes going on, the sewer going

on out there, this project is a multi-faceted project, lots of elements, lots of features going along and one movement of the schedule creates difficulties of some magnitude. Just want to bring that point of appreciation to the credulity of this. This station cannot be built without the cranes. This is a major project and totally critical to the Heart Center.

Mr. Harwell: Why couldn't that, when we met on the last one, if it's so critical, why couldn't that have been presented at the same time?

Mr. Bullock: Well, go back on the previous crane presentation if my memory serves me correctly and I was not at that hearing, but got the report back. The variance request there was for the height of the building. At the end of the approval of the building height the issue about the crane arose and since the crane was not apart of the building height variance presentation we had to come back for the previous high crane that is in place now and make a presentation which this Board granted that variance on the high crane. This is a different project, different contractor, different crane operator, and therefore a different application.

Mr. Harwell: What is the time frame for the large crane?

Mr. Tim McDonnell: Good evening, my name is Tim McDonnell. I'm the Chief Designing Construction.

Chairman Wubneh: Excuse me where you sworn?

Mr. McDonnell: Yes sir I did. Mr. Harwell may I answer your question in regards to the schedule.

Mr. Harwell: Yes sir.

Mr. McDonnell: Currently the schedule for the large crane T. A. Loving & McCarthy is approximately the end of December, 2006. Previous comments, we do encounter weather and some other things so theoretically we could have a lapse between that being complete and these cranes being discussed tonight still being in operation.

Chairman Wubneh: (Unclear) information to Mr. Harwell so we can try (unclear).

Mr. McDonnell: Does that answer your question sir?

Mr. Harwell: Yes sir.

Mr. McDonnell: Thank you.

Chairman Wubneh: Any other questions or any one else who, first, before we move on. Any other questions from the Board? Of the previous speaker.

Mr. Hutchens: Mr. Chairman, I was interested, is there any more testimony regarding the safety issue?

Mr. Becker: Yes sir. Could I approach.

Chairman Wubneh: Yes please.

Mr. Becker: Again, Brian Becker, Attorney for the hospital and the applicant in this matter. One thing that Mr. Harwell asked is a good question. I don't think Bob Williford understood about the IFR and I would ask Mr. Williford to come back up and explain to Mr. Harwell and the rest of the Board what happens at this site when it's raining, etc. and how low these cranes can be brought if those conditions exist. I just wanted to clear that up because I know for a fact that he didn't understand the question.

Mr. Williford: You asked me about IFR conditions and I responded that the cranes would be operational during the day light hours but I didn't understand that you were talking about bad weather. Instrument landing, I'm not a pilot and I'm not familiar with those terms so excuse me for answering incorrectly. If there is bad weather those cranes are not going to be in operation. If it's conditions where it's raining we can't erect steel and erect the building skin in poor weather conditions. Those cranes will be dropped below the horizontal surface during those times.

Mr. Estes: How about fog?

Mr. Williford: If it's, I think about fog if it's on the ground we can't.

Mr. Estes: That's different from rain that's why I asked the question.

Mr. Williford: I say that if it's poor weather at all we're not going to be able to use

those cranes.

Mr. Estes: So as I understand one of our conditions here we really don't have a conflict but if we place a condition

Mr. Williford: We're fine.

Mr. Estes: Where you would not be in operation due to foggy conditions, as what we referred to as IFR conditions, we really don't have a conflict.

Mr. Williford: No we don't.

Mr. Harwell: What I mentioned by the way was instrument metrological conditions and basically what that means at this airport is any cloud lower than 200 feet about that is what it amounts to. When they have IFR, metrological conditions, if operable the little white and green flashing light up on the tower that goes round, round and round, so it's a specific condition and you can have. If you can't see you can't take off and you can't land is what it amounts to. That's part of my concern is that tower up there in the clouds it's a problem.

Chairman Wubneh: So my understanding is if we put that condition in that addresses your concern? Is that correct Mr. Harwell?

Mr. Harwell: Yes sir. We might want to consider on the other one and I noted the date there that that crane was scheduled to be 12-31-2006 and we could and I wouldn't particularly object to that to say that this is effective no greater than 30 days after that effect.

Chairman Wubneh: Which would mean that?

Mr. Harwell: Which would get them through their schedule that we have already put in here October through January of 2007.

Chairman Wubneh: So their concern would be that some how they need to work it out with the other crane company on the 30 days.

Mr. Harwell: Well, the schedule that he commented on was the end of December and the form 7460, whatever that is, and I'm not sure this is part of the record at all. Yes

it is too. That the work schedule was between 06-01-2006 to 12-31-2006 and this is on a FAA form that was attached to the Determination of No Hazard on the letter dated May 15, 2006. Basically what happens, as I understand it, is their work schedule was for 12-31-2006.

Mr. Wright: How about if they apply to the FAA to get?

Mr. Harwell: They could probably get an extension.

Mr. Wright: Right.

Mr. Harwell: The way we set it up.

Mr. Wright: So if they apply to it and they got an extension they could extend

Mr. Harwell: It would roll through.

Mr. Wright: It would be up to them to apply to the FAA to extend it after June. That would be the most reasonable thing to do. Then we, it would be granted. I mean, it would be considered.

Mr. Harwell: And it would, as I understand it, it would not particularly have to come back to us the way we did the one, the previous one.

Mr. Bullock: I'm confused.

Mr. Harwell: All I'm doing is reading the documents.

Mr. Little: What's being proposed as Mr. Wright noted is that one expires when that crane comes down that was the May, 2006 letter which had the adjustments as far as the descent altitude.

Mr. Bullock: For the big tall crane.

Mr. Little: What could happen is, if, that the Board could approve with a condition that the descent altitude remain the same throughout the approval of this which would mean that if it gets approved then tomorrow somebody needs to get on the horn to the FAA and say amend this letter and have the descent altitude changed to

include the 680 or 620 whatever the adjustment was that way that could happen. What they're talking about, what Mr. Wright was talking about if you can go back to the FAA and have them adjust the letter just issued to continue the adjustment in the descent altitude. That's all they're talking about. (Unclear) make the crane stay up, just make that turn extend and incorporate it into the current No Hazard letter.

Mr. Wright: Then if the tall crane comes down you can continue to work and you won't have to pay.

Mr. Becker: Maybe what we could do or what I would suggest is, the FAA my understanding, they put conditions in their approval of No Hazard so that in their mind it's not a hazard. For the tall crane I think you can just imply from their decision that they felt it was only a No Hazard as long as that air space limit was raised. I'm not an expert in FAA law by any means but the decisions they've handed down on these cranes they haven't required that same ceiling extension. I have a feeling there might be likely scenario that if we applied to have the ceiling extended for these two smaller cranes they may not do it because they don't consider it a hazard as is. They only feel like they need to do it if it is a hazard. Maybe what your condition could be is, which I would be fine with, is that you approve these two cranes as long as we do apply for that extension. Not that it be necessarily granted because if they turn it down they don't feel like there is a hazard issue. We would be glad to make that application to bridge that gap.

Mr. Harwell: All that's required is an extension of the work schedule.

Mr. Becker: Of the tall crane.

Mr. Harwell: Tall crane. The work schedule as submitted was June 1, 2006 to 12-31-2006. If you make that into January it conforms to exactly what we've done here.

Mr. Becker: Yea, I, we obviously, the decision is in you'll hands. We would prefer that these two cranes not be tied to the duration of the tall crane. If you're going to require that I would very much ask that the requirement be that we reapply to the FAA to get that ceiling extended but not a requirement that it may be extended because they might come back and say "no, there's no hazard with those two cranes we're not going to extend it when there's no hazard to begin with". At least that would satisfy you'll as representatives of the community that you have asked us to take one yet another step beyond what the FAA has required.

Chairman Wubneh: But is it possible to get that statement from FAA saying that “we do not need to do this because it is not a hazard” then that would probably satisfy the Board?

Mr. Becker: We would be glad to tenure to you’ll whatever the response is from the FAA. I could talk to Mr. Little about it we could come before you’ll once again on a supplemental application if you’ll felt, if the City Attorney felt that letter wasn’t sufficient, I would hope that it would be.

Chairman Wubneh: The Board could make a decision either leave it up to the city to make that determination or if the Board feels you have to come back you have to come back. Whichever the way FAA makes a decision we would like to know either through the city or through you coming before us that’s a concern that the Board had, which is the height determination, somehow has been addressed by them.

Mr. Becker: Yes sir, cause again, the key being that the approval of these cranes not be contingent upon the tall.

Chairman Wubneh: I understand.

Mr. Bullock: The reason I said a moment ago I was confused when Mr. Little stepped up, I thought what I was hearing but apparently was not hearing. I thought what I was hearing was that the condition was going to be that the two shorter cranes come down within 30 days after the taller crane is coming down.

Chairman Wubneh: No, No, this is a separate....

Mr. Bullock: I would offer that as an alternative suggestion.

Chairman Wubneh: Did you have a question?

Ms. Safford-White: For this short period of time is between October 6, I’m sorry, October 2006 and January 2007. That is when the crane will not be in use anymore, is that correct?

Mr. Becker: The tall crane?

Ms. Safford-White: Yes.

Mr. Becker: The tall crane will be an overlap. Right now it's budgeted that the tall crane will be there until the end of December. It will be in place for all of October and November and December while these two cranes are there. The gap we're talking about is January assuming they stay on schedule. The big crane will come down at the end of December. You'd have the two small cranes left a month on their own without that large crane next door.

Ms. Safford-White: Now I'm confused.

Chairman Wubneh: What basically they're saying is that by December the tall crane will come down. If we do not give them that condition the small cranes would be in violation.

Ms. Safford-White: My concern is ...

Chairman Wubneh: (Unclear) the 30 days they do not want that linked with the other crane so it's just what they're asking if I understand him correctly is a matter for the Board to decide and say that get those 30 days extension by applying to FAA and if FAA feels that it's going to be a hazard once the big crane comes down that height requirement comes down then we would hear from FAA. If FAA does not approve and feels this is not going to be a safety hazard they will report that too. The question is whether that will satisfy the Board or whether they have to come before us or leave it up to the City Attorney to give us that information, whatever the Board decides. I think that's basically what..

Mr. Becker: Yea because basically what you'll find is the airport doesn't come in to object as long as FAA is okay. That's their big indicator. I know it's hearsay but I'm going to say it anyway when we go to Mr. Turcotte the first thing he does is after he reads the application is call the FAA because he wants to make sure there's no hazard. You alls condition as long as the airport doesn't object is tied directly with the FAA. For example, if the FAA felt it became a hazard at some point that would automatically kick in the airport's objection mechanism as well. So you're really covering it two different ways. We again, madam, we're, the gap is January, I think that is the thing we're most concerned about is if you'll tie the approval of these two smaller cranes to the big one that keeps that ceiling up there and we're going to be left with the two cranes by themselves in January. The big crane will have been taken down at that point as long as it's on schedule. What we're asking is instead of

requiring that the FAA keep that ceiling up for the big crane requirement that we just apply to FAA and ask them to do that. If they turn it down it would be because they don't consider it to be a hazard for those two small cranes and the ceiling doesn't matter. It would really help the project a lot to not link those two together. They're linked as Mr. Harwell pointed out which is a great point that I did not pick up on is we have a great benefit of 75 percent of the time those two cranes are there the ceiling has been lifted. That is something I did not pick up on preparing for this. We're just talking about a 25 percent part. Again, we will be glad to apply to FAA to get that ceiling extended for that gap and we will submit whatever their decision is to the city. If you will leave it in the city's hands for the sake of efficiency they could obviously call another hearing on this I imagine or make us apply again.

Mr. Estes: Mr. Chair. I've got a little bit lost here with all the back and forth but just to kind of recap in my own mind where we're at. As of right now we have no granted this variance? So we are discussing conditions under which we might grant it.

Chairman Wubneh: Specifically, with respect to safety issue. That was one of the criteria.

Mr. Estes: Right and one of the, we've got several different bodies here which are concerned with the public safety and we are one of those. Of course the FAA is.

Mr. Becker: Yes sir.

Mr. Estes: And I'm trying to weed out what my duty is here and I'm going to apply a label to myself, which I usually don't, but I tend to be very conservative on these issues when it comes to the public safety. I have been convinced by Mr. Harwell here that I think that a more conservative way to look at this would be to extend that ceiling, raise it, as it was with the taller crane for a longer period of time. I don't want to advocate my duty to some other body and allow the staff to make that decision for us or what have you, I think that's our job to do in spite of cost, in spite of impacts. The impact I'm more worried about is one of a plane hitting the ground. I was just trying to get all of those kinds of things lined up, what has happened, where we're at and I was just kind of running all that through my own mind.

Chairman Wubneh: I think what they are requesting is they are willing to go to FAA and request an extension for 30 days. Does this Board want to call them back to

come back before us before that 30 days comes and let us know they have secured that otherwise when that big crane comes down they have to stop the project. Or is this a matter that we can leave up to the city to tell us. I understand your concern, this is a responsibility of the Board and that is a case that we can request that they go before FAA and request an extension for remaining 30 days and whatever response they get they need to come back before us otherwise our approval would be only as long as that height requirement is in effect.

Mr. Estes: Which is the 12-31-2006, correct?

Chairman Wubneh: That's correct.

Mr. Harwell: Well that could be easily changed in their construction info which they submitted which the tall crane folks submitted to the FAA. That this would be a temporary duration, that it will last six months and the work schedule is from 06-01 to 2-06, 12-31-06. This is a matter of our record off of the last time that we considered the tall crane. My concern is that these run consecutively. It is not a matter of record tonight but it is a matter of record in the newspaper that jet service should start in the reasonable near future during this period. Jets generally have a slower reaction than propeller airplanes. I make that as a general statement not as a, course there are some that don't by the way that super fast reactions but the general jets that they would be flying have slower reaction. You have to think further ahead of the airplane than you do on the type airplanes that I generally fly. Therefore, it would seem to be reasonable that the cranes be in action during a specific period when the circle to land minimums have been increased or that conversely if the circle to minimum were to go with it but I would prefer that they be consecutively done. It would appear to me to be fairly simple on the application made by Nancy McCoy and Jerry Cagle on and sent out by the FAA on May 15th just be requested to revise the temporary construction and that would go along also with our variance granting as long as the FAA kept it in place. That doesn't mean they had to have a crane there. That means that the time would be extended a month so that these would be consecutive. It doesn't mean that the crane has to be in the air or even present. That's when I understand from this document submitted that their request was to the FAA for that six month period. If they didn't make it and needed to extend that request, as we noted in our variance request the last time, that our variance request would go along as long as the FAA had it in effect. That's why I came up with my recommendation.

Chairman Wubneh: Mr. Becker.

Mr. Becker: Yes sir, thank you. In FAA's approval for the tall crane we are, according to the approval as it stands right now, in the last paragraph of it, it says "that the FAA shall be notified when the project is completed and the temporary crane is removed from the site". What they're saying right now is that when that tall crane ... it's interesting when it says when the project is completed and the crane is removed. My understanding is that the tall crane comes down well ahead of the completion of the heart hospital. I would think. Is that right?

Mr. McDonnell: Yes, that is true. The large crane is being used right now for structural steel erection. When that is complete that large crane will go away. They will be using smaller cranes that will not be taller than the building to install the exterior skin. The construction schedule will continue on through late 2008 even though the crane may go away in December of 06.

Chairman Wubneh: But the height restriction still remains. It's not really a question of the tall crane coming down or not coming down. You have that height restriction up until that time period is that correct?

Mr. McDonnell: My understanding that we have the variance from this Board until that FAA variance expires. That expires when the contractor that owns the crane notifies the FAA that portion of the work is complete. Along those same lines, we did apply and were granted a variance for the height of the building which is separate from the crane. Does that answer your question Mr. Chair?

Chairman Wubneh: Yes.

Mr. Becker: I think that gets us back to what we've proposed to the Board originally. If there is a way that you all are satisfied with to approve these two cranes knowing that the large crane is budgeted to overlap three of the four months that it would not be tied to that large crane. We are glad to apply for that ceiling to be kept there for an extended period of time. I hear what Mr. Harwell is saying is that McCarthy-Loving next door could supplement their application to the FAA and say "we would like that extended for two more months". I think the challenge we're dealing with there is that when that crane comes down they have to be told so that the ceiling comes down. Maybe the best way to deal with this, based upon you'll concerns, is for us to apply to FAA to extend the ceiling, maybe by both contractors. Have both

projects apply for the extension, get the answers from the FAA and you all require us to tenure those to you upon receipt of them and you as the Board can decide if you want to bring us back in here for another application.

Chairman Wubneh: I don't know if we can go back to...I'm sure we have given six months, 3 months ago .. to tie it to the other people I don't think it would be fair. They have been granted and they are working, operating on schedule.

Mr. Becker: I see what you're saying.

Chairman Wubneh: (Unclear) Just tie them up to here. This would have to be decided on its own merits.

Mr. Becker: Exactly right. That way we've got three months covered based upon you'll concern and we're talking about this fourth month. One scenario would be the big crane is behind schedule and it doesn't even appear as an issue. I know the rain has hindered both projects a little bit. I think if we get the FAA response to whatever applications are made to lift that ceiling cause frankly it would behoove us to ask McCarthy-Loving to apply as well. It could be a requirement that we submit those responses to you.

Mr. Hutchens: Quick question Mr. Becker. I already understand that the crane will be lowered at night. Did I also hear your party agree that the crane will be lowered during instrument flight conditions?

Mr. Becker: Yes sir. As a practical matter they would be able to use it anyway. That condition is perfectly fine.

Chairman Wubneh: That was going to be a condition in our.

Mr. Becker: Yes. Absolutely.

Chairman Wubneh: Just a question of the height.

Mr. Becker: They both can be lowered 100 feet which is below the regular ceiling.
Chairman Wubneh: There's some calculations going on.

Mr. Becker: I very much as a citizen appreciate you'll concerns cause I'm flying

airplanes to around here. I think Mr. Estes was talking about your decision on Safety versus somebody else's. If I had to pick out of the three that have a say so in this frankly I would prioritize FAA as number one. That they clearly have the expertise above even the airport, I would argue, to know whether something is a hazard or not and we have them on board. The airport has not shown itself up to object. We believe that is having them on board too and I can understand the hearsay issues there. That comes back to you'll as the third governing body on the safety issue and I think you'll should feel very comfortable with the FAA especially being on board. There's no hazard even without the ceiling being lifted. Again, we're glad to ask if we can get that. What I would ask instead of you'll saying "if you don't get it, no crane past the time the tall crane is there". Instead of doing that say "that you give us the responses from FAA and then we as a Board can put a condition in here that it is up to us if we require you to come back with a supplemental application based upon what FAA comes back with". It kicks you right back into your safety decision, now you have a new fact. FAA has said we're not raising that ceiling. We would, of course, come up here and say that's because they don't think it is a hazard. You would have the issue before you again to decide if we're going to cut it off now. We would leave that decision in your hands if that issue ever came up. I think that should satisfy you'll safety concerns and keep the project going.

Ms. Bellis: Mr. Harwell, what is the difference in the ceiling, between the tall crane and the lower cranes?

Unknown: 40 feet.

Mr. Harwell: That is pretty close to correct. I got it scrambled in my notes here the difference in that. The concern that I have is the plus or minus 20 feet.

Mr. Becker: Yes sir.

Mr. Harwell: That's a big, big change and I don't remember any documentation in FEMA or the FAA or NGDV that authorizes a plus or minus 20 feet.

Mr. Becker: Mr. Harwell I don't know if this is way they did it, they also had an independent survey done that is part of the application by Patrick Hartman I believe. I talked with Mr. Hartman cause I had the same question "what does that mean?" They had an independent survey done that doesn't have a 20 plus or minus. It is down to the tenth of a foot and it comes in at 74. You do have that evidence before

you. I think it's the last page of the application.

Mr. Harwell: Last page of the application?

Mr. Becker: I think so.

Mr. Harwell: That's the same firm that did the plus or minus 20 feet.

Mr. Becker: I know there's a 2C and then there's a, what I thought was an independent survey.

Mr. Harwell: This survey says "this survey does not conform to a NCGS 47-30 and is not for recordation, sales or conveyances." That's what this survey says.

Mr. Becker: Yea, I'm neither an engineer nor a pilot nor an FAA expert. What we all do know as a fact as a Board looking at the safety issue is the FAA made their decision based upon the 2C that they require. I just don't have enough knowledge Mr. Harwell to know the ranges. I do know that the FAA was comfortable with that.

Mr. Harwell: With 20 feet plus or minus?

Mr. Becker: Yea, they're the ones that required that 2C survey.

Mr. Harwell: Call them tomorrow.

Mr. Becker: They required it we actually did an updated one for the new application and that was part of one of the requirements for the applicants. FAA had that before they made their decisions.

Mr. Harwell: Out of the Atlanta office?

Mr. Becker: I don't know where (unclear) Atlanta, yes sir.

Mr. Harwell: Thank you.

Mr. McDonnell: If I may Mr. Chairman. In reference to NCGS 47-30 (unclear) deals with the certifications and that sort of thing if you're going to record a plat. This was not prepared for recordation with the Register of Deeds of Pitt County. That's what

the NCGS 47-30 is. It's not a negative, it's a required certification for a plat prepared that is not prepared to be recorded other than to meet the requirements to be recorded in the Register of Deeds. It doesn't go to the accuracy of the measurements sometimes.

Chairman Wubneh: Any concerns?

Mr. Harwell: That's alright.

Chairman Wubneh: The Board satisfied with all the concerns? For the benefit of the other members have you gotten the whole grasp of that specific item conditions?

Mr. Harwell? I know you are our expert and that is why I am looking at you. I think it would help us if you could restate that specific area what we are seeing in respect to the height. We change that they go back to the FAA or back to.

Mr. Harwell: I wouldn't recommend that.

Chairman Wubneh: Both you and Mr. Estes had that concern otherwise we should be ready to vote on that specific criteria. I just want to make sure that all members understand because there are a lot of things that went back and forth.

Mr. Hutchens: One reason I asked Mr. Becker if both of these crane lowering would take place during the night and during IFR conditions is that it seemed to me that height, the clearance question mute if that is indeed going to be the case.

Chairman Wubneh: Okay.

Mr. Harwell: That is correct. I agree with him.

Chairman Wubneh: So basically then we do not need all this, part about them having to go back as long as that operation is met. Are you clear Mr. Becker? I just want you to understand.

Mr. Becker: Could you explain that to me just so I make sure I'm following it.

Mr. Hutchens: If you'll recall I asked you if the crane will be lowered at night and during instrument flight conditions and you said "yes" and that's what I was reaffirming. If those conditions were met then indeed the lower height ceiling

question would be mute.

Mr. Becker: Yes sir.

Chairman Wubneh: Is the Board clear on that?

Mr. Harwell: The essence of that is that those restrictions do not come into play except when the weather condition is lower. Circle to land doesn't exist if it's good weather.

Chairman Wubneh: Okay. Is the Board ready to vote? Members of the Board if you are ready it's the last criteria which is basically the Safety and Welfare Condition. Do we need to vote one by one or.

Mr. Harwell: What are we voting on?

Chairman Wubneh: If you are satisfied with what we have discussed with the condition being.

Mr. Harwell: Don't we first need to vote to reopen the matter?

Chairman Wubneh: We did.

Mr. Harwell: We voted on that already? Okay.

Chairman Wubneh: We voted to reopen the matter, we had a discussion going back and forth and I believe we came to the consensus that says if they are not going to be operating due to IFR time and during the night and all those other conditions that you have specified earlier then we are ready to vote on the Safety and Welfare criteria that we turned down, there were two negative votes earlier.

Mr. Hutchens: And we'll come back and (unclear) the conditions?

Chairman Wubneh: Yes, we'll come back. Yes, we'll go through the whole thing.

Mr. Estes: Then I have a question. So the original six conditions we have voted on those and accepted them. Okay, that's what I was asking.

Several members talking at once.

Mr. Harwell: We're just thinking about it.

Chairman Wubneh: We are now at the criteria. So, we will go one by one on Safety and Welfare. Given the fact that the conditions (unclear). Mr. Harwell?

Mr. Harwell: Yes.

Chairman Wubneh: Mr. Estes.

Mr. Estes: Yes.

Chairman Wubneh: Mr. Hutchens.

Mr. Hutchens: Yes.

Chairman Wubneh; I vote yes.

Ms. Bellis: Yes.

Ms. Safford-White: Yes.

Mr. Wright: Yes.

Chairman Wubneh: Okay, members of the Board I believe that matter has been cleared and we have voted Yes and I would like to get a motion to approve the findings of fact with all the conditions that were spelled out.

Mr. Little: I'll summarize that, all additional facts that were found.

Chairman Wubneh: All those in favor of approving the findings of fact with all the conditions summarized, all the conditions that were presented, please indicate by saying "Aye". Opposed? I would like to get a motion to approve the motion.

Motion by Mr. Wright.

Mr. Harwell: With the conditions.

Mr. Wright: Do we have to explain each condition?

Chairman Wubneh: No. I wouldn't even attempt to summarize them there are so many. They're on the record. So Mr. Wright you're moving.

Mr. Becker: Mr. Chairman if I may so that I'm clear that the requirement to apply to FAA is not part of this anymore?

Chairman Wubneh: Correct. Motion by Mr. Wright.

Ms. Safford-White: Second.

Chairman Wubneh: Second by Ms. Safford-White. All those who are in favor

Mr. Harrell: Wait, wait, I've got a, let's not vote yet. Say that again.

Mr. Becker: I want to make sure what to report back to my clients. My understanding is that there is not a requirement for us to apply to FAA to have the ceiling raised.

Mr. Harrell: Yes, that's.

Mr. Becker: Thank you.

Chairman Wubneh: Once this condition of you not operating during inclement weather so forth and so on then what the Board has felt is that it's a mute question which is basically you don't have to do what we discussed earlier. Okay, I think we are ready to and I'm not trying to rush the Board, are we ready to vote? Motion by Mr. Wright and second by Ms. Safford-White. Those in favor of approving the petition please indicate by saying "Aye". Opposed? With all those conditions stated your application is approved. Congratulations and I'm sorry it took but you can kind of understand the concern of the Board. Safety is very critical and basically that's the reason.

Mr. McDonnell: Mr. Chairman, if I could on behalf of the hospital I would like to thank the Board for reopening the discussions and thank you for hearing us tonight.
Chairman Wubneh: Thank you.

ELECTION OF OFFICERS

Chairman Wubneh stated that the next item of business is the election of officers.

Motion was made by Mr. Harwell, seconded by Mr. Wright, to retain our present officers for another term. Motion carried unanimously.

Chairman – Dr. Wubneh

Vice-Chair – Ann Bellis

There being no further business the meeting adjourned at 9:00 PM.

Respectfully submitted

Seth Laughlin
Planner