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Pursuant to Award No. CJR102410

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BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE PROMULGATION)
AND ESTABLISHMENT OF FIELD RULES) CAUSE NO. 407
TO GOVERN OPERATIONS IN THE) and 232
WATTENBERG FIELD AND CODELL-) Docket 11-17
NIOBRARA SPACED AREA, WELD COUNTY,)
COLORADO)

ORIGINAL

PURSUANT TO NOTICE to all parties in
interest, the above-entitled matter came duly on for
hearing at the State Education Building, Room 101,
201 E. Colfax Avenue, Denver, Colorado 80203, on
Monday, November 18, 1991.

BEFORE:

Commissioner Truman Anderson

Commissioner Ed McCord

Commissioner Rogers Johnson

Commissioner Gretchen VanderWerf

Commissioner John Campbell

Dennis Bicknell, Director

John Stowell, Deputy Director

Patricia Beaver, Technical Secretary

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COLO. OIL & GAS CONS. COMM.

1 CHAIRMAN WELBORN: Back on record.
2 The last matter is Cause No. 407 and 232, Docket
3 11-17. This is Wattenberg Field in the
4 Codell-Niobrara spaced area of Weld County. The
5 applicant is Erie Airpark Homeowners Association,
6 seeking the establishment of special field rules for
7 certain lands as described in the notice. Protests
8 have been filed by Martin Exploration Management
9 Corporation, through its counsel, Mr. Bate; and by
10 Vessels Oil and Gas Company through its counsel, Mr.
11 Sullivan.

12 My firm represents Vessels Oil and Gas
13 Company. Mr. Sullivan and I are partners so I cannot
14 proceed to hear this matter and will turn it over to
15 our Vice Chairman, Commissioner VanderWerf; and
16 unless there's any objection or strong feeling the
17 other way, do that.

18 (Discussion off the record.)

19 VICE CHAIRMAN VANDERWERF: I will take
20 appearances now in this matter. Who is appearing for
21 Erie Airpark Homeowners Association? Would you
22 state your full name for the record?

23 MR. WILEY: Dennis Wiley. I am board
24 member of the Homeowners Association of Erie Airpark.
25 Madam Chairman, members of the commission --

1 VICE CHAIRMAN VANDERWERF: Mr. Wiley,
2 before you continue, I need to get the other
3 appearances. Is there anyone here representing
4 protestant, Martin Exploration? Mr. Bate.

5 MR. BATE: Richard Bate, appearing for
6 the protestant, Martin Exploration Management
7 Company.

8 VICE CHAIRMAN VANDERWERF: And is
9 there anyone here appearing for the protestant,
10 Vessels Oil and Gas Company? Mr. Bicknell, do you
11 expect Mr. Sullivan to appear?

12 MR. BICKNELL: We expected them to
13 appear to take part in the proceedings. Their
14 protest does not indicate just a statement or
15 something, a written statement, but they would like
16 the opportunity to comment.

17 VICE CHAIRMAN VANDERWERF: Do you have
18 any information as to whether Mr. Sullivan was going
19 to be here this morning?

20 MR. BICKNELL: We certainly felt he
21 was going to be here.

22 CHAIRMAN WELBORN: I didn't even know
23 he was doing this, so I haven't talked to him about
24 it. Do you want me to call before I go back to the
25 office?

1 MR. BICKNELL: Please.

2 MR. WILEY: I talked to him. He knew
3 we were here.

4 VICE CHAIRMAN VANDERWERF: I think we
5 have to proceed, unless we've given Mr. Sullivan some
6 reason to think that the hearing wasn't going to
7 proceed this morning. So, Mr. Wiley, you may
8 proceed.

9 MR. MONAHAN: Madam Chairman, one
10 point of clarification. Unless Mr. Wiley is an
11 attorney licensed to practice law in the state of
12 Colorado, he may only appear in his individual
13 capacity and not as a representative of a corporation
14 or an association in the state of Colorado.

15 MR. WILEY: Okay. Let me at least
16 state that I am just a member of the board of the
17 association.

18 MR. MONAHAN: You own property.

19 MR. WILEY: I own property within
20 the --

21 MR. MONAHAN: That's sufficient for
22 you to represent yourself and to make comments in
23 front of the commission and bring an application in
24 front of the commission.

25 MR. WILEY: We do have other people

1 interested here also.

2 MR. MONAHAN: They can appear as
3 individuals themselves, and also give comments if
4 they so choose, but comments that you give will be
5 attributed to yourself and they cannot be attributed
6 to the homeowners association. If the homeowners
7 association wants to appear, as a party, in a matter,
8 they will have to hire an attorney.

9 MR. WILEY: Okay. Essentially, Dennis
10 Bicknell wanted a single point of contact. I just
11 happened to be selected within the homeowners.

12 MR. MONAHAN: That's fine.

13 MR. WILEY: First thing I would like
14 to say, is that we understand the situation that you
15 have gone through with Mustang Acres, and I want to
16 explain why we're asking for different field rules
17 than you have given Mustang Acres, which is,
18 essentially, expanded at 350 feet from the residence.

19 And one main reason is that Mustang
20 Acres is comprised of a conglomeration of two-acre
21 lots that most people own four or more of, and have
22 eight or actually eight or ten-acre parcel for a,
23 typically, horses, and things. So you only find --
24 in effect, only find a residence density, as far as
25 residences go, maybe one residence every eight acres.

1 Unlike that subdivision, Erie Airpark
2 is actually a -- the lots are single residence lot
3 and consist of two-acre lots up to 3.77 acres. There
4 are ten lots on the subdivision that are greater than
5 2 1/2 acres and you will notice that, in our request,
6 we included five acres or less; that was just to
7 cover some of the little larger lots.

8 Our main thrust is that there's a
9 greater density here than there would be at Mustang
10 Acres. It's within the city limits of Erie,
11 Colorado. We know that land use isn't at issue here,
12 but, certainly, safety is. And as far as our safety
13 concerns, mine and other homeowners, in my mind, is
14 that establishing a condensate tank, of 5,000 gallons
15 or greater, within the boundaries of the Erie Airpark
16 subdivision itself is -- it's a residential
17 subdivision, like I say, quite a bit more compact.
18 I happen to be trained in demolition in the United
19 States Army. And a gallon of raw gasoline is almost
20 equivalent to a 40-pound stick of dynamite. And when
21 you are talking about these quantities of gasoline,
22 sitting within a residential subdivision,
23 particularly, with the situation down in Cortez here,
24 in September, was it, that the gas well blew up.
25 Just, it's not foreseeable to us, as being a good

1 situation for the next 20 years, however long that
2 well would be in production. That even your own
3 safety regulations in Section 605 say that just a
4 20-pound charge should be 1,000 feet away from any
5 residences. So we have other considerations, which
6 Mr. Scott Hunt, manager of Erie -- as far as the
7 infrastructure and roads we have within the airpark,
8 and within the subdivision, we're, as far as having a
9 problem with destroying some of our property, and
10 obviously our fire-fighting equipment and things like
11 that.

12 I would like to point out that the FAA
13 also has written Martin Oil Company in regards to
14 their Young No. 4 and No. 5 sites, which, I am sorry,
15 I don't have copies for everybody, but are the pink
16 dots within the subdivision. And you can see the
17 runways oriented throughout the subdivision here.
18 FAA has stated that, through the United States of
19 America Department of Transportation, that there is
20 significant safety problems with having these wells
21 within this area. We have granted Martin Oil Company
22 wells outside this particular area. We would like
23 Mr. Jack Furer, who is the attorney representing
24 about 40 of the vacant lots, still, within the
25 subdivision, has a copy of that letter from the FAA,

1 if we would -- if we can let you see that also.

2 And, in addition, we think that,
3 obviously, Senate Bill 65, back where they have
4 increased the restrictions on being able to subdivide
5 parcels of land down into small acreage, the
6 restrictions are so great, that it's not likely that
7 other subdivisions will be created, just to exempt
8 oil companies from recovering their resource by doing
9 it through subdivision rules, so we're only talking
10 about the existing subdivision here. And our main
11 thrust for this request was within 350 -- under five
12 acres, within 350 feet of the residence and, also, a
13 property line, the -- that was essentially to exclude
14 drilling within the subdivision itself, the
15 residential area itself.

16 There's other areas within the city
17 which the city can work out with the state courts
18 later, but that's our main thrust; that if you grant
19 us this, it would pretty much exclude any exploration
20 within the residential part of the subdivision,
21 without the oil companies having to do directional
22 drilling -- we understand that it is a little bit
23 more expensive, but I am sure that, at some point, it
24 will be economical, economical to recover those
25 resources. And at this point, that's all I have to

1 say, personally.

2 Like I say, we have a representative
3 from the City of Erie that's concerned about this,
4 same safety considerations. We also have -- we tried
5 to keep this down to a small meeting. There's half a
6 hundred families out there that are very concerned
7 about this. We didn't want to swamp the commission.
8 But we do have two residents here that are right
9 adjacent to one of these wells that are proposed,
10 and, of course, three of the board members here. And
11 Mr. Jack Furer, who is a representative of, like I
12 say, about 40 properties that haven't been developed
13 yet. There's roughly 56 properties that are built or
14 in the process of being built on or seeking permits,
15 if that will help, of 119 lots out there. Is there
16 any questions that I can answer?

17 VICE CHAIRMAN VANDERWERF: Mr. Wiley,
18 let me ask you, would you like to introduce the plat
19 into evidence as an exhibit?

20 MR. WILEY: Yes.

21 VICE CHAIRMAN VANDERWERF: I think
22 that would be helpful. Why don't we call this
23 exhibit Applicant's Exhibit 1. Are there any
24 objections to receiving it into evidence? Mr. Bate?

25 MR. BATE: No objection, Madam

1 Chairman.

2 VICE CHAIRMAN VANDERWERF: Okay. The
3 plat is admitted. Mr. Wiley, let me ask you, does
4 the plat show the actual outline of the subdivision,
5 the Erie Airpark Subdivision? Could you --

6 MR. WILEY: Yes, that's not a --

7 VICE CHAIRMAN VANDERWERF: -- could
8 you sort of point that out to the commission.

9 MR. WILEY: This isn't a survey copy,
10 but the plat -- the residential area in the
11 subdivision is over here. This side of the runways,
12 including this corner over here, this is small, this
13 includes the airport facility itself, the fueling of
14 the aircraft and hanger areas and whatnot, and, then,
15 a few industrial sites right along here. But this is
16 the residential area over here.

17 VICE CHAIRMAN VANDERWERF: Are there
18 any other questions for Mr. Wiley?

19 COMMISSIONER McCORD: I have a
20 couple. Are you a pilot?

21 MR. WILEY: Yes, I am.

22 COMMISSIONER McCORD: How long are
23 these strips?

24 MR. WILEY: The main north/south strip
25 is about 4800 feet long. It's about 3700 feet on

1 east/west. I would also like to mention, along with
2 the -- as pilots, we are very concerned about the
3 second well that's even over in the industrial side,
4 because, in as far as my knowledge goes, we have had
5 eight or ten airplanes off the runways just in the
6 last year. This is quite a frequent occurrence,
7 actually, around airports here. Didn't have a major
8 accident, but the airplanes do get askew and get into
9 ground loops, occasionally, and wander off the
10 runways; and that particular well, Young No. 4, we
11 know of at least three airplanes that have come down
12 right around that area right now, and within the last
13 year.

14 COMMISSIONER McCORD: Can you -- I am
15 not a pilot -- can you give me some idea of the type
16 of plane, the size of plane this strip is designed to
17 accommodate?

18 MR. WILEY: This strip normally would
19 take just what we call light singles and light twins,
20 and these are up to six- or eight-passengers
21 aircraft, although, on occasion, we are a Class III
22 reliever airport for Stapleton. If they have a large
23 backlog of aircraft landing at Stapleton, then they
24 will tend to take some of the business aircraft,
25 which could be 12-, 15-passenger twins, and direct

1 them over to our airport.

2 COMMISSIONER McCORD: You mentioned
3 that FAA had written Martin regarding the FAA concern
4 about the two wells -- proposed wells.

5 MR. WILEY: Young 4 and 5.

6 COMMISSIONER McCORD: Did FAA
7 expressed any concern about the proximity of
8 residential housing to these strips?

9 MR. WILEY: When the airport was
10 originally laid out, it was set up so the housing had
11 to have certain back sets from the active runways and
12 taxis. And it's just like, like to me, that there's
13 some housing that's -- but the lots go all of the way
14 up to the runways there, but the houses have to be so
15 far off -- away from the runway.

16 COMMISSIONER McCORD: The point being
17 that no matter how far the houses are setback from
18 these adjacent lots, they are closer to the strips
19 than the wells.

20 MR. WILEY: That's true. One of the
21 FAAs guidelines they use is the height of an
22 obstruction from the centerline of the runway, out,
23 and the houses have to be built low enough to meet
24 the 7 to 1 slope; that it is -- the wells would both
25 fall within that area where an airplane could -- a

1 near miss, pull away and strike one in there, the
2 rigs, or it's -- we're more concerned, really, about
3 tankage there. The drilling rig will obviously be
4 beyond eventually.

5 COMMISSIONER McCORD: What is your
6 understanding about the substance of these tanks?
7 You mentioned gasoline.

8 MR. WILEY: As far as I understand it,
9 store the condensate off gas wells there, which is,
10 basically, a raw gasoline, low octane gasoline.

11 COMMISSIONER McCORD: Thank you.

12 MR. WILEY: Any other questions?

13 VICE CHAIRMAN VANDERWERF: I am sorry,
14 Tim, should I have sworn Mr. Wiley? I neglected to
15 give you the oath here.

16 (Whereupon the witness was sworn.)

17 VICE CHAIRMAN VANDERWERF: All right.

18 MR. MONAHAN: Can I ask Mr. Wiley,
19 when the airstrips were constructed, were the wells
20 already in place?

21 MR. WILEY: No, they are not. Those
22 pink spots there are proposed wells.

23 COMMISSIONER ANDERSON: Is there a
24 permitting procedure under the -- FAA has?

25 MR. WILEY: No. Unfortunately, the

1 FAA can't restrict anybody from drilling there. They
2 can only advise that -- when there's a safety hazard
3 there. Like saying, they have been advised that
4 would create a safety hazard; that there's no force
5 to that, you see, until the accident happens.

6 COMMISSIONER ANDERSON: If I wanted to
7 drill right in the middle of the runway, even if we
8 didn't object, I think the FAA couldn't object to
9 that, either.

10 MR. WILEY: Well, they're concerned
11 with anything within a half mile of the airport,
12 and/or the centerline of cross of that -- those
13 runways, and/or within half mile off the ends. And
14 then if you will, obviously, if it's within the
15 surface of the runway, they would have an objection,
16 I am sure, but I am not quite sure what that amounts
17 to because they can't, under these particular areas
18 where, you know, you're within the half mile, they
19 can only advise of the safety hazard. That's what we
20 were told by the FAA. They can't help us, otherwise.

21 COMMISSIONER JOHNSON: Where is the
22 plane gas storage?

23 MR. WILEY: That's over in the
24 industrial area, which would be the southwest corner
25 of the intersection of those runways. Those are

1 below ground facilities, as they have to be. In
2 fact, our covenant, which I am sure doesn't mean
3 anything to the board here, but specifically, in our
4 covenant, we also restrict the use of above ground
5 tankage with hazardous materials in them, and for
6 much the same reason. Plane slides off the taxiway,
7 or something like that, into a tank.

8 VICE CHAIRMAN VANDERWERF: Do the
9 protestants have any questions for Mr. Wiley?

10 MR. BATE: No questions.

11 VICE CHAIRMAN VANDERWERF: Mr.
12 Sullivan? The record should reflect that Mr.
13 Sullivan has now entered the hearing room.

14 MR. SULLIVAN: No questions.

15 VICE CHAIRMAN VANDERWERF: Any
16 questions from the staff.

17 MR. SMINK: I just have a comment.
18 Just years ago I was involved in drilling of a well
19 that was located within the city limits of Corpus
20 Christi, Texas, and bottom hole location of that well
21 to be below one of the runways of the Corpus Christi
22 International Airport. I can't recall the exact
23 dimensions. We were required to setback at least a
24 quarter -- might have been one half mile from that
25 runway -- directionally drill that well. And, in

1 that particular case, we were required to move back.

2 MR. WILEY: It could have had to do
3 with the class of the airport, I suppose. We're a
4 Class III reliever airport. That was a Class I TCA,
5 I am sure. Lot more restrictions.

6 VICE CHAIRMAN VANDERWERF: All right.

7 COMMISSIONER McCORD: Before we leave,
8 do you have a position as to what we should do if you
9 are suggesting we not use Mustang Acres standards?

10 MR. WILEY: What we're asking is that
11 you grant us what we're asking for here, which is 350
12 feet from a residence, which is identical to Mustang
13 Acres; however, we would also like to include that to
14 a property line; that, basically, then would
15 eliminate the possibility of drilling within this
16 particular subdivision. We're trying to make this as
17 small, and not a problem for any others in the state,
18 you know, based on our particular situation, so we're
19 trying to to ask for as little as we can, to insure
20 our safety out there.

21 COMMISSIONER ANDERSON: The practical
22 effect of it is to prevent the drilling and
23 production?

24 MR. WILEY: Right.

25 COMMISSIONER ANDERSON: Of whatever.

1 MR. WILEY: Unless they would drill
2 within 350 feet outside of the boundaries of the
3 residential area itself and directional drill.

4 MR. MONAHAN: So your application is
5 amended not to cover Section 31 and the south half of
6 Section 30, but rather just the area that's within
7 the subdivision.

8 MR. WILEY: The areas that we ask for,
9 which some of that area is outside of the residential
10 area, but also covers the proximity of the runways.
11 And, otherwise, there would be the possibility,
12 again, of having an oil tank right on the side of
13 runway. It's not in the residential part of the
14 area.

15 VICE CHAIRMAN VANDERWERF: Mr.
16 Bicknell.

17 MR. BICKNELL: I would like to -- the
18 opportunity to furnish Mr. Wiley and the
19 commissioners a set of rules that we're talking
20 about.

21 MR. MONAHAN: The record might show
22 that these are, as ordered, from the September 16,
23 1991 hearing. I guess my question is, is Mr. Wiley
24 endorsing this complete set of rules, 1A through 3,
25 or just a rule that would have to have five acres

1 in --

2 MR. WILEY: Well, it does state
3 average. I am just stating that of the 119 lots,
4 there are ten that are greater than 2 1/2 acres. And
5 the only reason we're asking for five was to cover
6 some of those larger lots. If, in the wording here,
7 that "average" would also include all of our lots,
8 then that's -- this would be fine, as far as it goes,
9 but with the addition of the airport being there, we
10 feel that we need to be able to set it -- the
11 distances also from property lines to the lots at 350
12 feet, also, which would then exclude the -- just in
13 the area that we're asking for. We're not asking for
14 the township or anything like that. Just that 1 1/2
15 section.

16 COMMISSIONER JOHNSON: The 1 1/2
17 sections?

18 MR. WILEY: Yes. It's the -- most of
19 the subdivision is in Section 30, and part of the
20 subdivision is in the south half of Section 31. We
21 understand this to be a non -- not a good precedent
22 for the rest of the state, but considering the
23 airport is there is what our main concern is.

24 COMMISSIONER McCORD: Can we do one
25 more thing which would help me understand. Taking

1 the exhibit again, have you approximated what 350
2 feet would be or what the radius would be for each of
3 these proposed wells?

4 MR. WILEY: This well, right here, is
5 950 feet from this, that happens to be the
6 north/south county line road for Road 1. That's
7 approximately 950 feet there. So, as you can see,
8 we're probably, right now, that well would probably
9 be 600 or 700 feet from the runway, the north/south
10 runway cross.

11 COMMISSIONER McCORD: What would the
12 distance be to the closest lot to the south?

13 MR. WILEY: I am guessing that would
14 probably be within 300 feet.

15 COMMISSIONER McCORD: If the operator
16 should decide to move the well slightly to the north,
17 then you wouldn't have a problem with that?

18 MR. WILEY: Well, this last half of
19 the section would be up here. And we would prefer
20 again, from the safety -- obviously, the further that
21 we move the well away from the runways the better.
22 We would prefer to have no wells located between the
23 both north/south and crosswind runway and somewhere
24 off here -- actually FAA says that, again, that's a
25 1-to-7 height regulation off the end of these

1 runways, they want us to stay away from. And it's --

2 COMMISSIONER McCORD: Mr. Bate, I
3 don't know if this is out of sequence or not, but is
4 Martin actually interested -- I know you are
5 interested in drilling a well at this western
6 location, but is Martin actually interested in
7 drilling a well on this lot here?

8 MR. WILEY: They have got it staked.

9 MR. BATE: Which one?

10 VICE CHAIRMAN VANDERWERF: Perhaps for
11 the record, someone could give us well names.

12 MR. WILEY: Young No. 4 and 5.

13 VICE CHAIRMAN VANDERWERF: But
14 identify which is which. I am not sure that's clear.

15 MR. BATE: Let me find out here.

16 COMMISSIONER JOHNSON: Mr. Wiley, who
17 owns the minerals under the -- somebody in the
18 subdivision?

19 MR. WILEY: As far as I know, none of
20 the property owners in the subdivision own any of the
21 mineral rights, and they are apparently leased by
22 Martin Oil and Vessels.

23 COMMISSIONER JOHNSON: They are
24 severed minerals?

25 MR. WILEY: Yes.

1 COMMISSIONER JOHNSON: It's a former
2 landowner, probably.

3 MR. WILEY: Right. Then they have
4 been leased to Martin and Vessels.

5 MR. BATE: The location designated for
6 the Young No. 5 is a proposed location for the
7 wellhead; however, the production facility would
8 probably be moved some distance to the northeast,
9 away from any housing. Also, with respect to the
10 Young No. 4, which is the location of -- which is
11 designated on the plat, those production facilities
12 would be located some distance to the northwest of
13 that well.

14 COMMISSIONER ANDERSON: However, at
15 some point, there's going to be a drilling well rig
16 some number of feet off the end of the runway?

17 MR. WILEY: Yes.

18 COMMISSIONER ANDERSON: Could you do
19 it again? How many feet is that?

20 MR. WILEY: The approximate location
21 of this well is 950 feet east of that line, to give a
22 sense of scale. So you can see it's somewhat less
23 than that from the end, I am guessing 600 feet or so.
24 The maps that we received from the oil commission
25 don't have it exactly to scale there.

1 COMMISSIONER ANDERSON: Do airplanes
2 land from that direction?

3 MR. WILEY: Yes, they do, and, like I
4 say, these three little airplanes right here, are
5 locations airplanes have gone down in the last year,
6 or flown off the runway, or gone off the runway.

7 COMMISSIONER McCORD: You choose to
8 live there.

9 MR. WILEY: Yes, sir.

10 COMMISSIONER McCORD: It seems unfair
11 to condemn, because you are accepting that risk and
12 you are opposing this other risk -- you voluntarily
13 assume the risk of living right near where airplanes
14 land.

15 MR. WILEY: A small airplane,
16 particularly when they are taking off and landing,
17 has not much inertia force, not much chance of doing
18 a great amount of damage. Pretty much the -- when
19 they run over the runways, again, those areas are
20 clear right off the runways, you know how far you can
21 run off the runway without getting into real trouble;
22 that if you mix that with the explosive force of
23 several thousand gallons of gasoline, it's just a
24 real mess. If you run into somebody's garage, that's
25 not a life-threatening incident.

1 COMMISSIONER McCORD: This isn't for
2 you. I certainly would like to hear something from
3 the other side as to what kind of a facility they
4 propose; whether, in fact, you will be exposed to
5 that type of risk.

6 VICE CHAIRMAN VANDERWERF: Are there
7 any further questions of Mr. Wiley?

8 MR. BICKNELL: I will -- I still am
9 not sure of the answer to my previous question. The
10 piece of paper I gave you that starts off Rule 10 at
11 the top, is, Mr. Wiley, are you suggesting that if
12 this were changed to an average platted density of
13 5.0 acres or less, then what flows on the rest of the
14 page is acceptable to you?

15 MR. WILEY: We have additionally asked
16 for 350 feet from the property line in this specific
17 area.

18 MR. MONAHAN: Under 1A.

19 MR. BICKNELL: You would want to add
20 the 350 feet from the property line?

21 MR. MONAHAN: Under 1A.

22 MR. WILEY: In addition to.

23 MR. BICKNELL: You would still agree
24 with the waiver provision of 2A, if the property
25 owner comes forward with a waiver.

1 MR. WILEY: Yes. With a waiver. If
2 they can get enough of the property owners in
3 agreement to waive that, I feel it shouldn't be a
4 problem. I don't think that's likely, but --

5 MR. BICKNELL: Well, that may or may
6 not be. It may only take one waiver though.

7 MR. WILEY: I see.

8 MR. BICKNELL: You may only be
9 encroaching 350 feet towards one property owner. So
10 once that person gives a waiver, if it follows, the
11 rest of this, it might be possible for a permit to be
12 issued; that's fine.

13 I would like the commission to
14 understand there are no applications for wells to be
15 drilled in the Erie Airpark pending, filed with the
16 commission. This is another one of those vacuum
17 things that these people wrestle with and the
18 applicant companies wrestle with, and we're in the
19 middle. There are no applications before the
20 commission staff.

21 MR. WILEY: There is intent.

22 MR. BICKNELL: It's called an intent
23 to drill. There is not an intent to drill before --
24 filed with the fee at the oil and gas commission.
25 Now, it may be an intention in someone's mind, as I

1 understand, and I have seen -- the staff has seen
2 there are stakes all over the neighborhood here, but
3 there is not an application to drill a well on file
4 with the commission. I just want the commissioners
5 to understand that.

6 COMMISSIONER ANDERSON: Is this area
7 subject to any field rules? Is it currently part of
8 the field?

9 MR. BICKNELL: Just whatever horizon
10 might be spaced by any order of the commission, if it
11 is so spaced. Rule 318, the 600 series rules, all of
12 them in Cause 232.

13 COMMISSIONER McCORD: Our counsel, in
14 terms of ripeness, are we -- can we make a decision,
15 if we should choose today, given that there are no
16 applications pending?

17 MR. MONAHAN: You have an application
18 in front of you to establish field rules. You assume
19 that this is an established field. So, yes, I think
20 that you can act on it.

21 VICE CHAIRMAN VANDERWERF: Okay. Is
22 there anything else from Mr. Wiley at this time?
23 Did you -- excuse me -- do you have a question for --
24 Mr. Wiley, do you wish to make --

25 MR. HUNT: I have several pieces of

1 evidence I would like to present.

2 VICE CHAIRMAN VANDERWERF: Let's
3 finish with Mr. Wiley. I think we're done. Thank
4 you, Mr. Wiley.

5 MR. WILEY: Thank you.

6 VICE CHAIRMAN VANDERWERF: Let me ask
7 you your name, please.

8 MR. HUNT: My name is Scott Hunt. I
9 am town manager of Erie, Colorado.

10 VICE CHAIRMAN VANDERWERF: And are you
11 going to give a statement or testimony in this
12 matter?

13 MR. HUNT: Yes, I am.

14 (Whereupon the witness was sworn.)

15 VICE CHAIRMAN VANDERWERF: You might
16 proceed.

17 MR. HUNT: I want to present the
18 letter that we received by Martin Oil Exploration,
19 from the FAA, stating that there is a safety hazard
20 that does appear at the approach zone for the
21 airport. Secondly, it is -- couple of things I
22 wanted to state.

23 In reference to there not being an
24 active application for a well there, I was called by
25 Martin Oil Exploration and told that they had already

1 received all of their permits for the well and that
2 it would be not beneficial for me to try to interfere
3 with their plans. And although that may have been,
4 in actuality, might be another well, the inference I
5 got was a well within the Erie Airpark.

6 Couple of other facts, it has a
7 reliever status for the Denver airport. It's
8 important to the towns growth. Secondly, the
9 waterlines at the airpark area were not designed for
10 the type of impact that you are going to get with
11 putting a -- drilling a rig out there. We have
12 serious concerns about that being a great financial
13 loss to the town if a waterline was cracked, as is
14 generally the case for waterlines, it will take
15 several months to -- several years to manifest itself
16 in a leak.

17 And then the -- just another
18 additional comment, when you were holding up maps,
19 one of the wells appears to be within the Coal Creek
20 floodplain as established by the Federal Emergency
21 Management Agency. So I just question that if that
22 application ever comes up, it's a worry as to its
23 impact on the floodplain, so that's --

24 COMMISSIONER JOHNSON: That's the No.
25 4 well, the west well.

1 MR. HUNT: I don't know which well --
2 okay.

3 COMMISSIONER JOHNSON: No. 4.

4 VICE CHAIRMAN VANDERWERF: Do you wish
5 -- would you like to offer into evidence the letter
6 from the FAA which we could mark as Applicant's
7 Exhibit 2?

8 MR. HUNT: If we can get a copy of it,
9 yes.

10 VICE CHAIRMAN VANDERWERF: Were there
11 any objections to the admission of Exhibit 2?

12 MR. BATE: No objection.

13 VICE CHAIRMAN VANDERWERF: It is
14 received in evidence. Mr. Bicknell.

15 MR. BICKNELL: You might advise anyone
16 needing copies that you can go, and, across the foyer
17 here, there's a public copy machine.

18 VICE CHAIRMAN VANDERWERF: Are there
19 any questions from the protestant? Mr. Bate or Mr.
20 Sullivan?

21 MR. BATE: I have no questions, Madam
22 Chairman.

23 MR. SULLIVAN: No questions.

24 VICE CHAIRMAN VANDERWERF: Were there
25 further questions from the commission or the staff?

1 All right. Thank you very much. Is there anyone
2 else here today who wishes to speak on behalf of the
3 application? Yes.

4 MR. FURER: My name is Jack Furer. I
5 am an attorney licensed to practice law in the state
6 of Colorado. I represent the owners of the
7 approximately 40 lots which are represented, bulk of
8 the unsold lots in this subdivision -- I think it's
9 117 lots, half of which -- almost half of which have
10 been developed. I too wanted to state that
11 Elizabeth --

12 VICE CHAIRMAN VANDERWERF: I think I
13 need to swear you in.

14 (Whereupon the witness was sworn.)

15 MR. FURER: I just want to state that
16 on August 28, 1991, I received a call from a
17 representative of Martin Exploration telling me that
18 they, too, had the permit; that they want to drill a
19 well on Lot 33, Block 2, which is designated on that
20 subdivision plat that they gave me. Other than that,
21 I agree with everything else that Mr. Wiley has said.

22 VICE CHAIRMAN VANDERWERF: Are there
23 any questions for Mr. Furer, or do the protestants
24 have any questions?

25 MR. BATE: No questions.

1 VICE CHAIRMAN VANDERWERF: Mr.
2 Sullivan?

3 MR. SULLIVAN: No questions.

4 VICE CHAIRMAN VANDERWERF: Questions
5 from the commission? The staff?

6 MR. BICKNELL: Would you just repeat
7 the number of un -- they are unsold lots.

8 MR. FURER: I am not sure how many are
9 unsold. We have 40 -- approximately 40 lots that are
10 unsold. There are other lots that are unsold,
11 undeveloped.

12 MR. BICKNELL: Undeveloped.

13 MR. WILEY: You mentioned that you had
14 contracts on three of them, pending the outcome.

15 MR. FURER: I have contracts on one
16 with exculpatory provision in them, pending on the
17 resolution of this matter and -- two contracts
18 pending resolution of this matter. People aren't
19 interested in building a home if there are going to
20 be oil wells on the property or gas wells on the
21 property.

22 COMMISSIONER McCORD: Do you live out
23 there?

24 MR. FURER: I do not.

25 COMMISSIONER McCORD: Do you have any

1 interest in the property?

2 MR. FURER: I do.

3 VICE CHAIRMAN VANDERWERF: Thank you.

4 Is there anyone else who wishes to be heard on behalf
5 of the application? Are protestants going to put on
6 any evidence? Mr. Bate?

7 MR. BATE: No, Madam Chairman. I
8 don't anticipate putting on any evidence. I would
9 like to state that Martin Exploration Management
10 Company has no objection to the adoption of field
11 rules in this area, but we see no reason -- we have
12 heard no evidence which would support the adoption of
13 the 350 foot setback line from the property lines.
14 We think the 350 setback from a residence or a place
15 of public assembly, as was done in the field rules
16 for Mustang Acres is correct and proper and should be
17 adopted, but we cannot see any safety purpose that
18 would be served by the 350 foot setback from a
19 property line.

20 As Mr. Wiley stated, it appears to be
21 -- that sanction appears to be motivated by the
22 attempt to prevent drilling within the subdivision
23 entirely. And that's just simply doing by the back
24 door what you can't do by the front door. Let's
25 remember some basics here. The reason that drilling

1 is a possibility in this subdivision is that these
2 surface owners, for some reason, do not have the
3 right to prohibit drilling, insofar as their
4 ownership of the lands is concerned, et cetera, which
5 they have acquired, subject to an oil and gas lease,
6 or they have acquired subject to a mineral
7 reservation that the mineral owner has leased. So
8 that these lots owners are, by attempting to use this
9 350 foot rule to prevent us from drilling in the
10 subdivision, are attempting to acquire a right that
11 they never acquired when they purchased the land;
12 that is, the right to prevent the development of the
13 minerals.

14 If the commission were to go along
15 with that suggestion that would be a taking and would
16 be subject to just compensation. That particular
17 field rule they are asking for is unnecessary. They
18 haven't shown any basis, any necessity for it; and,
19 therefore, we don't think it should be included in
20 the field rules.

21 VICE CHAIRMAN VANDERWERF: Mr. Bate,
22 does Martin agree that the result of granting this
23 application would, in effect, impede or prohibit any
24 drilling in the subdivision?

25 MR. BATE: If it was adopted with the

1 350-foot setback from the property lines.

2 MR. MONAHAN: Mr. Bate, I heard Mr.
3 Wiley say part of the rationale behind the 350 foot
4 limit from the property lines was to gain protection
5 for the runways; that might not be within 350 feet of
6 the residence. Would the protestant here agree to or
7 take contest with a limitation that was based on 350
8 feet from the centerline of the runway?

9 MR. BATE: I will let you know in just
10 a minute. That would be acceptable, except for the
11 proposed location for the Young No. 4, which will
12 have to be moved, but we might be able to move it.
13 We could look into that and see if it were possible
14 to do that.

15 COMMISSIONER JOHNSON: What's the
16 approximate drilling time in that area? How long
17 might that --

18 MR. BATE: Twelve days. With respect
19 to the FAA problem -- by the way, that problem has to
20 do with the rig. And you have to understand that the
21 drilling plans are still pretty nebulous, as far as
22 Martin is concerned here, but one possibility would
23 be to shut down the runway while the drilling rig is
24 on location.

25 COMMISSIONER JOHNSON: That would be

1 approximately 12 days.

2 MR. BATE: Approximately 12 days.

3 COMMISSIONER JOHNSON: East-west
4 runway.

5 VICE CHAIRMAN VANDERWERF: What are
6 Martin's drilling plans? I think that question has
7 been raised. There's no application permit to drill
8 that's been filed.

9 MR. BATE: Well, yes. Martin does
10 propose those locations, as indicated on those maps,
11 but has a lot of work to do before it files
12 application for drilling permits.

13 COMMISSIONER JOHNSON: I would like to
14 know, what is the mineral ownership in the
15 subdivision and adjacent to the subdivision?

16 MR. BATE: I don't think there's any,
17 very general way to answer that. There is -- there
18 are some severed minerals. In some cases, I think
19 that minerals may be owned by the surface owner. I
20 should note in the answer to this, I have examined
21 the titles on a large part of this, but I didn't
22 bring my title opinions with me. It's not any
23 generalized pattern, as I recall.

24 COMMISSIONER McCORD: Do you agree
25 with what we have heard thus far; that virtually no

1 surface owner who lives there now owns any mineral
2 interests?

3 MR. BATE: I think that may be true.
4 That may be true. I think most of them acquired,
5 either subject to the existing oil and gas leases, or
6 subject to a mineral reservation and the leases were
7 taken from the owner who reserves the minerals.

8 COMMISSIONER JOHNSON: Were the two
9 proposed sites -- did you deal with different mineral
10 owners or the same?

11 MR. BATE: I don't think -- let me see
12 if I can find that.

13 MR. MONAHAN: While Mr. Bate is
14 looking at that, do you have a position concerning
15 the 350 foot setback from the -- based on runway
16 rather than the property line?

17 MR. WILEY: Yes, sir. The 350 foot we
18 were asking for, from the property line, was to
19 eliminate in the residential part itself. As I said,
20 the FAA has grave safety concerns, even with the
21 other site, which wouldn't violate that 350-foot
22 rule, and yet they still see that it's a safety
23 hazard because of the aircraft running off of there.

24 MR. MONAHAN: I heard Mr. Bate say
25 that was based on the drilling rig, not -- would not

1 be a problem with the production rig.

2 MR. WILEY: Well, the FAA, of course,
3 is primarily concerned with the height problem,
4 initially, but, as I am saying, is -- on the piece of
5 evidence that I put in there, you know, you have at
6 least three airplanes that have been off the runway
7 in that vicinity in the last year. So, if there's
8 any kind of fuel storage tank there -- if they can
9 get the fuel storage tank a good ways away, off the
10 runway, I don't know, half mile or something. . .

11 MR. MONAHAN: Did those planes go down
12 over 359 feet off the runway?

13 MR. WILEY: Yes, they did.

14 MR. MONAHAN: Doesn't say much for the
15 pilots.

16 MR. WILEY: It's a training facility.
17 There's only three of eight or so that have happened
18 in the last year. These weren't crashes that you
19 read about in the paper. They just wandered off the
20 runway, in most cases.

21 MR. MONAHAN: It appears to be up to
22 1500 feet off the runway.

23 MR. BATE: I might point out that
24 Martin intended to move the production facilities for
25 that well up to the west line of the section, and,

1 also, they are anticipating getting a gas well, so
2 we're not anticipating much in the way of storage of
3 condensate or any such thing as that.

4 With respect to the question that
5 Commissioner Johnson asked me, the mineral owners
6 under the two wells that we propose are different.
7 And, also, I am informed that probably no surface
8 owners own any minerals in the subdivision.

9 COMMISSIONER MCCORD: One of the last
10 pieces of the puzzle, when did Martin acquire these
11 lease rights which allows them to drill, rather than
12 -- was it before or after this housing project was
13 approved?

14 MR. BATE: Before the subdivision was
15 approved -- it was after.

16 VICE CHAIRMAN VANDERWERF: Are there
17 any additional questions of Mr. Bate? Would you
18 state your full name, please.

19 MR. ROBERTS: Jack Roberts. I had a
20 question for the attorney. You say that the field
21 rules would keep you from drilling on the property,
22 but, is -- would that preclude you from drilling the
23 minerals itself?

24 MR. BATE: Yes. The only way we know
25 to develop oil and gas is to drill for it.



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1 MR. WILEY: You don't continually go
2 straight down.

3 MR. BATE: Directional drilling is
4 always a theoretical possibility, but it greatly
5 increases the cost of oil and gas operations. The
6 cost of directional drilling tends to be
7 unpredictable because of problems that can arise in
8 the drilling process, so it adds a significant element
9 to the cost.

10 Also, the way these field rules are
11 proposed, it doesn't sound to me like the directional
12 drilling site would be found either. 350 feet from
13 the property line, the length of the whole
14 subdivision, it wouldn't allow for a location of -- a
15 directional drill site wouldn't be found, either the
16 directional drill site or a vertical drill site.

17 VICE CHAIRMAN VANDERWERF: It's 12:30,
18 and I think we're going to have to break for lunch
19 now. I apologize about that, but we have scheduled
20 the lunch. There may be people who are coming and
21 who are waiting for us now. So what time, Dennis,
22 would we resume?

23 MR. BICKNELL: 1:30, 1:45.

24 VICE CHAIRMAN VANDERWERF: 1:45. I
25 think we should say 1:45. Let me ask you, Mr. Bate,

1 Mr. Sullivan, Mr. Wiley, have the two sides ever
2 gotten together and talked about drilling
3 restrictions and the concerns that are being
4 expressed here this morning, because I want to
5 suggest very strongly that, over the lunch recess,
6 that you should get together and talk and see whether
7 there's any way to try to resolve this, because I
8 think the commission is feeling that we're in
9 somewhat of a quandary here.

10 MR. WILEY: As late as this morning,
11 we talked to Mr. Bate. He said he wants to drill in
12 the subdivision, period.

13 MR. BATE: Martin's position is they
14 don't want to be foreclosed from drilling in the
15 subdivision, but that such drilling should be
16 controlled by reasonable field rules, such as we've
17 adopted in Mustang Acres.

18 VICE CHAIRMAN VANDERWERF: Is there
19 any possibility -- could you agree on reasonable
20 field rules? That's something I just want to
21 suggest that you talk about over the lunch recess,
22 see if you can agree on some field rules.

23 MR. MONAHAN: Or specific locations
24 for the wells and well production facilities.

25 MR. WILEY: Within that subdivision --

1 I sure would like to invite everybody out -- within
2 that residential subdivision, there's no location
3 that would be reasonable, in that residential area.
4 In the -- on the west side where it's --

5 MR. MONAHAN: I need to stop you
6 because, Mr. Wiley, you have to understand these
7 people have a right to develop their minerals.

8 MR. WILEY: I understand that.

9 MR. MONAHAN: You can't just say
10 there's no reasonable location.

11 COMMISSIONER ANDERSON: When you say
12 that, you put us in a very bad position, because the
13 result is, you are telling the commission -- you are
14 asking the commission to promulgate an order that has
15 the effect of taking value --

16 MR. WILEY: It wouldn't be very far
17 off to deny them drilling right here in the middle of
18 the capitol grounds, you know. There's obviously oil
19 reserves down there too, but we have to have some
20 kind of reasonableness to it. I don't know what kind
21 of subdivision you live in, and, okay, maybe ours are
22 two-acre lots. A typical lot is a third of an acre,
23 and something in a residential subdivision -- still
24 is not that much space between these homes.

25 COMMISSIONER ANDERSON: These are

1 people with property rights as well.

2 MR. WILEY: Well, I am not saying they
3 can't recover those mineral rights. It may take some
4 directional drilling to do that. But -- I think
5 that's a reasonable trade-off.

6 COMMISSIONER JOHNSON: I think it's
7 worthwhile for you to look at a more reasonable
8 location.

9 MR. WILEY: Well, with the -- with the
10 hole -- if this was a regular rural subdivision,
11 there probably wouldn't be near the problem, and
12 something like Mustang Acres is working. The problem
13 is, with the airport there, you can't be putting
14 those kind of hazards around those runways. As a
15 pilot, I just know that. We'll have casualties.

16 VICE CHAIRMAN VANDERWERF: Well, I
17 think we're going to have to break for lunch now and
18 I would suggest that you do try to talk over the
19 lunch recess. We'll resume at 1:45.

20 (Recess.)

21 (At the unanimous consent of the
22 commission, after lunchbreak, an executive session
23 was held concerning a personnel matter.)

24 VICE CHAIRMAN VANDERWERF: We're ready
25 to go back on the record. The record should reflect

1 that the commission has been discussing a personal
2 matter in executive session. Is there a motion to
3 come out of the executive session?

4 COMMISSIONER JOHNSON: So moved.

5 VICE CHAIRMAN VANDERWERF: Is there a
6 second?

7 COMMISSIONER ANDERSON: Second
8 (Whereupon the vote was called.)

9 VICE CHAIRMAN VANDERWERF: All
10 right. The commission is no longer in executive
11 session, and we will now continue with our hearing in
12 Cause Nos. 407 and 232, relating to the application
13 of the Erie Airpark Homeowners Association. Did
14 anything happen over the lunch hour that the
15 commission should be aware of? Yes, Mr. Wiley.

16 MR. WILEY: Actually, we probably come
17 more in agreement than not in agreement. However,
18 there's a fly in the ointment regarding rules of the
19 oil and gas commission. We have determined that the
20 area alongside the runway is -- about 1,000 feet out
21 would probably satisfy most of the safety concerns of
22 the aircraft, and -- as far as sliding into a
23 above-ground facility, and Young No. 4 is nearly
24 1,000 feet away now. But if they go any further to
25 the west, they would be violating your 990 feet from

1 a section line. And, so, if there would be maybe a
2 variance that you could grant Martin towards that,
3 then they might be able to see their way to staying
4 1,000 feet away from the runways.

5 And as far as the rest of it goes, the
6 only thing we can agree on is to adopt the same rules
7 as we have adopted for Mustang Acres, the 350 feet to
8 a residence. And we'll have to deal with any other
9 concerns, later, with the city.

10 MR. MONAHAN: Mr. Bate, where -- is
11 the 990 foot limitation, is that an existing field
12 rule?

13 MR. BATE: I believe it's in the
14 spacing rules for this area. Here's a thought, what
15 we might do. We might adopt the field rules, as they
16 are in Mustang Acres, at this hearing. And, then, if
17 and when Martin, well, Vessels, or whoever decides
18 that they want to drill, the distance from the runway
19 can be looked at when the application for drilling
20 permit is reviewed by the commission staff. And we
21 can initiate a dialogue at that time as to how far
22 away from the runway the well should be placed, in
23 order to meet the safety concerns.

24 But I do have one concern: That is,
25 that we would like to -- this will be, to my

1 knowledge, anyway, the second set of field rules that
2 we have adopted, and uniformity is a real value here,
3 I think. And if we could address special situations
4 in connection with the grant of the drilling permit,
5 rather than in connection with the field rules
6 themselves, it might make more sense. There's a lot
7 of precedent for that of course, already. But if we
8 start adopting field rules that establish setbacks
9 for peculiar situations within individual
10 subdivisions, we're going to have a procedural mess,
11 I am afraid. And I think that should be dealt with
12 in connection with the review of the application for
13 drilling permit, just as it would be in the case of
14 surface obstructions or, you know, whatever, some
15 special hazards or any other kinds of problems that
16 might arise in the application for a drilling permit.

17 Now if we did that, I think we could
18 have an agreement today. We would ask the commission
19 to adopt the same field rules that they adopted in
20 the Mustang Acres, but, then, we would get with the
21 people from Erie Airpark, before we filed an APD, and
22 would try to satisfy their concerns; or, if no
23 agreement could be reached, let the commission staff,
24 or the commission itself, decide where that
25 particular well should be located, but not try, in

1 advance, before we have a -- we haven't decided where
2 we want to drill or whether we want to drill, try to
3 carve out a window around these runways, because
4 we're not sure how far away the well should be from
5 the runway. So that would be my suggestion as to how
6 we could do it.

7 VICE CHAIRMAN VANDERWERF: Mr. Wiley,
8 is that something that you can agree to?

9 MR. WILEY: Commenting on Mr. Bate is
10 that, obviously, we're concerned just about Erie
11 Aircraft Park. There's also a park on State -- which
12 is also another small airport, just north of us, up
13 there with a similar situation. There's Platte
14 Airport, of course, out east. There's a number of
15 these small airports around that could end up having
16 the same problem.

17 I don't think it's unreasonable, as
18 you can see, 1,000 foot off the runway is not a
19 particularly far distance. We try to move it out to
20 where the FAA would be a little less concerned about
21 it, and we're less concerned ourselves. But I would
22 think that if the commission could make that as part
23 of airports, period, not necessarily just from an
24 airport, but that 1,000 feet off a surface runway,
25 just as far as the state is concerned, and if a --

1 may come back and say they want more, but that would
2 sure make us feel a little more comfortable.

3 VICE CHAIRMAN VANDERWERF: I think
4 we're dealing here with a very specific situation in
5 this application. I don't think today we can go
6 beyond that to make a general rule, because that
7 would be a rulemaking procedure that would require
8 notice and giving people a chance to be heard.

9 MR. WILEY: Is there anyway that we
10 can kind of get assured that, all of sudden, a well
11 won't be coming up right next to one of these
12 runways, today?

13 COMMISSIONER McCORD: Well, you raised
14 an interesting point. The buffer that you have --
15 your first buffer is that application to drill, APD.
16 And one of the things we have talked about a long
17 time, several meetings, is that it's a rather quick
18 process. We prided ourselves, in one sense, in
19 giving a quick turnaround, and, then, on the other
20 side of that, we would like to consider what we were
21 doing, too, whether there were problems.

22 Dennis, what is your thought about
23 connecting this 1,000 feet from the runway
24 consideration, for example, to an APD? In other
25 words, considering it at that stage.

1 MR. MONAHAN: Well, the suggestion I
2 just had with Madam Chairman is that that's the type
3 of issue we might want to consider in January when we
4 look at all of these general safety regulations. The
5 airport issue may be just the type of issue that
6 needs general treatment across the state, rather than
7 treatment here in this specific spaced area, and
8 treatment, again, in perhaps just a little different
9 way, in another spaced area.

10 MR. BICKNELL: Let me respond to a
11 couple of things. In particular, first, to Mr.
12 Bate's comment. I will tell you that the proposed
13 CCI/Industry rules, you will find what looks likes
14 verbatim Rule 10, and it will be applied on a
15 statewide basis, should it be adopted. I would also
16 tell you that it is probably the most uncomfortable
17 thing for the industry right now, out of the whole 27
18 pages or whatever you have, 12. I will tell you the
19 facilitator in his facilitation, was pretty adamant
20 about it. So I think that may come to pass.

21 Whether we can start addressing
22 individual developments such as airparks, baseball
23 complexes, I think that's already out there. We have
24 put that in our rules for a number of years, areas of
25 public assembly. Whether you want to get into notice

1 to aviators, on drilling rigs, you can go up and look
2 at the Greeley Airport, which is somewhat larger than
3 the Erie Airport. There are oil and gas wells all
4 around the place. We have accommodated the
5 extensions of it. The oil and gas commission has
6 currently been working at the new Denver
7 International Airport, addressing the old wells and
8 the new wells, from a safety viewpoint. Why, life's
9 a gamble. We think the record really does pretty
10 well, speaks well, for the safety aspects. Which
11 gets me to the -- kind of back to the beginning, you
12 know, here's these poor people, here's those rich
13 people. You know, we're in the middle. They say,
14 gee, there's four stakes out in my backyard. Gee,
15 you're lucky. Call them and they say, well, we
16 haven't made up our minds. We're out looking. It
17 would seem to me appropriate, if these people can
18 bring in, through a surface use agreement, here's the
19 place we're going to locate the well that satisfies
20 the Erie Airpark Homeowners Association and is
21 satisfactory to the conservation statutes and Order
22 232, I don't see where we have much trouble improving
23 it.

24 It seems to me, though, that if a
25 significant number of the Erie Airpark homeowners

1 were not in agreement, even though the company makes
2 a bond, I think the -- for the surface restoration, I
3 think it poses a real dilemma for the commission,
4 whether I should go ahead and approve a permit like
5 that or not. That's one of the reasons I told you
6 about going out to see WWC No. 2 last night, nine
7 o'clock. Because, remember, when was that? Three
8 months ago? It's to a point where we got a rig, but
9 certainly there was a lot of dialogue, and, I guess,
10 if we have to facilitate dialogues, why, fine, but
11 the commission or certainly staff, or me, get into
12 kind of a quandary. I am not too sure what we are
13 doing because we don't have something concrete, we
14 don't have a application, we do or don't hear from
15 these people because, you know, Mustang Acres, we
16 heard very divergent opinions. Some people were, get
17 a rig out there now and others had it never.

18 So it seems to me that if an
19 application to drill comes and these people sign off
20 on it, I approve it. If the applicant needs help
21 meeting the requirements of Cause 232, 990 foot
22 setback, we'll work with them on that. But surely
23 there must be some windows out there, or there are
24 just no windows. That may be something that one has
25 to look at, the price of your lease no longer has

1 value. So I am not sure that was any kind of answer,
2 but it's a hell of a statement.

3 VICE CHAIRMAN VANDERWERF: It does
4 sound like we're making some progress. Mr. Sullivan,
5 did you have anything you wanted to say today?

6 MR. SULLIVAN: I would like to make
7 one statement. Vessels -- I represent Vessels Oil
8 and Gas Company. They own both mineral interests and
9 oil and gas leasehold interests in the lands covered
10 by the application. Vessels is primarily concerned
11 about the proliferation of a bunch of individual sets
12 of field rules for each subdivision, which were
13 expressed by several people here today, and feels
14 that the commission should avoid the multiple sets of
15 field rules, unless there's good reason not to,
16 particularly in the case where there may be taking
17 issues arising with regard to the mineral estate.

18 But the only distinguishing factor
19 here seems to be the airport, and the application
20 includes some restrictions that don't appear to me to
21 apply to the airport. I don't see a reason why those
22 particular -- any restriction regarding nonairport
23 issues should be dealt with differently in this
24 subdivision than the other airport -- subdivisions.
25 Perhaps, the proposed regulations that are coming up

1 through the CCI process would be the way to do that,
2 since then you would get the standard subdivision
3 rules. And if the parties can't agree on particular
4 issues, then maybe the Mustang Acres one, which the
5 -- to my knowledge, is the only subdivision rules
6 that deals with these issues, perhaps that's the
7 particular method to follow in the near term.

8 With respect to the airports, I don't
9 feel there's been enough information presented to
10 determine exactly what is needed in terms of safety
11 there. Perhaps there is information available, such
12 as using the temporary rule, going with the current
13 FAA regulations. Maybe you ought to -- maybe the
14 commission just ought to wait until sufficient
15 information is presented on that. I really don't, in
16 my mind, have a solution as to that, other than to --
17 I feel it is a factor. It sounds like it's a
18 statewide factor since a half dozen airports have
19 been rattled off here, should be addressed, perhaps
20 in a uniform manner, with more information, based
21 upon what the safety requirements of an airport are.

22 One other thing that I noticed on this
23 is that Martin is proposing to put the production
24 facilities further away from the runways. Sounds
25 like it would be more than -- the production

1 facilites would be more than 1,000 feet away from the
2 runways. If they could do that, it takes only 12
3 days to drill, or, I don't know, maybe drill and frac
4 the well. Perhaps some consideration should be given
5 to rules or approval of a drilling permit, which also
6 sounds like a better idea, that would allow one set
7 of rules for drilling and another set for production
8 facilities, if that's possible. I think the more
9 flexibility you give both sides in establishing the
10 location in a situation, the better off you are going
11 to be; that, to me, indicates that perhaps the best
12 way to do it would be to negotiate specific problems
13 on a drilling permit basis, and cover most of them
14 with a general set of rules that would be applicable
15 statewide.

16 VICE CHAIRMAN VANDERWERF: All right.
17 Is there anyone else here today who wishes to say
18 anything before we close the hearing in this matter?
19 Mr. Hawkins.

20 MR. HAWKINS: I am Bill Hawkins with
21 Amoco Production Company. Amoco does not own
22 interests in Section 30 or 31, although we do have
23 interests surrounding it, and it is part of the
24 Wattenberg-spaced area under Cause 232. So I think,
25 from that point of view, we have an interest in

1 seeing how you handle this problem. Our
2 recommendation at this point would be to, again, look
3 at what CCI is going to recommend on a statewide
4 basis.

5 I think I agree, totally, with what
6 Mr. Sullivan said on consistency throughout the state
7 when handling residential subdivisions. The unique
8 part of this one does appear to be the airport. That
9 may take special consideration on a statewide basis,
10 or it may be one of -- possibly be treated as a
11 surface hazard under a location exception. But to
12 put in special field rules that deal with the
13 airport, at least in my mind, doesn't really make a
14 lot of sense for this area. I would say, at most,
15 adopt what you have in Mustang Acres. At a minimum,
16 sit back and wait for CCI and see what's adopted on a
17 statewide basis. We think that's going to look like
18 Mustang Acres, but it might not. Try to be
19 consistent when this comes up again and again and
20 again in other places.

21 VICE CHAIRMAN VANDERWERF: All right.
22 Mr. Bicknell.

23 MR. BICKNELL: I just wanted to remind
24 the commission that when we have an application
25 affecting spacing or setbacks before you, we approve

1 applications to drill that meet those and only those,
2 because, regardless of whether you make a decision to
3 approve or reject, at the time that permit is
4 approved, it coincides with what other application is
5 before you.

6 We would point out that we are
7 continuing the Mesa thing, again, which there is no
8 sense of urgency from the two operating companies
9 involved. They are not needing to go drill wells.
10 It might be interesting to consider whether there has
11 to be a well drilled immediately at Erie Airpark, and
12 perhaps the request would remain in place, and it
13 would be continued, should you be unable to adopt
14 anything at this time; that really seems to address
15 some rather nebulous things that are still out there.
16 So I just remind you that when there is that pending
17 application, we make sure everything meets the
18 requirements of that application.

19 COMMISSIONER JOHNSON: I was curious
20 as to the utilization of the north-south runway
21 versus the east-west. Is that fifty-fifty or
22 two-third/one-third, or what would you estimate it?

23 MR. WILEY: It could easily be
24 two-third/one-third. The primary runway is the
25 north-south runway. When there's a crosswind, we use

1 that runway (Indicating.)

2 COMMISSIONER JOHNSON: Maybe a third
3 of the time?

4 MR. WILEY: Yes. Depends on how the
5 wind belows, I would guess.

6 MR. MONAHAN: I would like to ask Mr.
7 Bate and Mr. Sullivan whether or not their clients
8 have any intention on drilling wells there in the
9 future?

10 MR. BATE: Martin probably would want
11 to drill one or perhaps two wells within 60 days.

12 MR. MONAHAN: Within 60 days?

13 MR. SULLIVAN: Vessels does not have
14 any plans to drill.

15 VICE CHAIRMAN VANDERWERF: Mr.
16 Johnson.

17 COMMISSIONER JOHNSON: I would like to
18 explain to the homeowners, I have had a little
19 experience with the takings and a lot of people don't
20 know about that that are landowners, or not
21 attorneys, or something, but with -- what that means,
22 someone has a property right -- and this was decided
23 in two cases by the U.S. Supreme Court. If they have
24 the property right, and that is denied by a
25 government agency and maybe even by a homeowners

1 group or something, that the denial of that right
2 obligates the party denying that right to compensate
3 the person losing their right, fairly, and even if
4 that's a temporary taking, short-term taking, that
5 was one of the cases, they're to be compensated for
6 the short-term taking, so it's very basic and very
7 serious if you deny someone one of the fundamental
8 property rights. Like your landowner rights or
9 surface rights, you have to respect the mineral
10 rights. So it's a very serious matter that's been
11 decided all of the way. It's final.

12 VICE CHAIRMAN VANDERWERF: Yes, Mr.
13 Wiley.

14 MR. WILEY: I want to respond. We're
15 all aware -- real aware of the seriousness of the
16 matter; that the oil company should get their mineral
17 rights, with the least amount of expense involved.
18 And that's -- I am saying, during the lunch break, is
19 that we have come to a fairly close agreement here
20 and that they will be able to, without directional
21 drilling, by implementing the Mustang Acres' field
22 rules, in addition to the 1,000 foot setback, to
23 protect us on runways and stuff; that that still
24 allows, basically, two wells out there.

25 COMMISSIONER JOHNSON: I respect that,

1 but just "takings" is an easy word, and, to me, for a
2 long time, it didn't have any basis or meaning, and I
3 wanted to make sure that you knew a little more about
4 that.

5 MR. WILEY: We have discussed that at
6 length.

7 MR. MONAHAN: Mr. Wiley, what are the
8 prospects that you could come to an agreement with
9 the operators concerning the location of the well
10 thereby negating any need for the subdivision rules,
11 if I can call them that. If you decide or can settle
12 with operators as to an exact location, what's the
13 necessity for the subdivision rules?

14 MR. WILEY: Well, we have come to a
15 conclusion, like, say, on the well, Young No. 4,
16 which would be on the west of the runway; however,
17 that would probably need to be away -- and production
18 facilities -- from aircraft getting off the runway.
19 What we haven't -- actually we haven't said on the
20 subdivision side of the runway that, yes, you got to
21 drill here, because nobody agrees it should be
22 drilled there; that would be -- that would be worked
23 out with individual property owners like they would
24 normally, anywhere. We're just saying, we do feel
25 like we have -- at least would like to have the

1 Mustang Acres 350-foot rule and the rest of the rules
2 apply to us also.

3 MR. BATE: I would like to second
4 that. Martin is not the only operator out there. I
5 think that putting field rules in place, now, like
6 the Mustang Acres rules, is probably advisable,
7 otherwise Dennis is going to be presented with a
8 drilling permit application that he cannot refuse,
9 which might not accord with where the commission
10 wants the well drilled.

11 VICE CHAIRMAN VANDERWERF: I think I
12 asked this question before when we were talking about
13 Mustang Acres, but what is the effect of the CCI,
14 assuming we passed those regulations, and I am sure
15 we will, in some form, what is the effect on previous
16 field rules, such as Mustang Acres, or, perhaps Erie
17 Airpark?

18 MR. MONAHAN: When we discussed them
19 in the past, I've always -- or at least opined or
20 requested that the commission go back and look at the
21 special field rules that have been passed in the
22 past. See if they are now necessary in light of the
23 general rule that's applicable across the state.

24 COMMISSIONER McCORD: As a matter of
25 procedure, would it be possible -- I am not

1 suggesting we do this -- would it be possible to
2 create an order today, a provision that, okay, let's
3 say we pass Rule 10, as it stands, and, then, should
4 some statewide rule be adopted -- in a sense, what we
5 do today, is that possible or is it not advisable?

6 MR. MONAHAN: I think that if the
7 commission passes a field rule today, based on the
8 specifics of this one location, it's probably
9 advisable, if they were going to change it, they do
10 it on a specific basis, not a general basis, passage
11 of a statewide rule.

12 VICE CHAIRMAN VANDERWERF: Are there
13 any other questions? What's the pleasure of the
14 commission?

15 COMMISSIONER ANDERSON: I am glad the
16 parties came to a conclusion that rules comparable to
17 what we have in Mustang Acres might be acceptable. I
18 have a deep reluctance to go beyond them for a lot of
19 reasons. First of which, is that something is likely
20 to come out of the Industry/CCI process, which is
21 going to generate something a lot like what's in Rule
22 10. Second, it sounded like we had a clear case of
23 taking a property right, if the desires of the
24 homeowners association, as suggested, were adopted.
25 I think, if there is an agreement between the parties

1 that the commission adopt a special field rule, along
2 the lines of what we did in Mustang Acres, that would
3 be -- that would be fine with me. I would support
4 such a thing.

5 With respect to drilling, distances of
6 drilling from runways, I am more inclined to want to
7 deal with that in the -- when the permit application
8 is filed, in the hope that, prior to its filing, that
9 agreement be reached between the operator and the
10 homeowners in the area. If that agreement isn't
11 reached, that, then, the commission hear it and
12 decide on it. This is a unique circumstance. I
13 don't remember ever hearing anything like it before.
14 I think that it may well be that there are other
15 airports in the state that -- where similar
16 circumstances apply. It makes sense to me that you
17 have distances from a runway; that there are simply a
18 different set of factors from the other kind of
19 setbacks we talked to. My inclination, it's going to
20 be a number of the kind that has been discussed
21 here. I would like to hear it, from that issue, and
22 maybe even get comments, if we get somebody from the
23 FAA to come talk about it, or I will feel better
24 about it than doing it here today.

25 VICE CHAIRMAN VANDERWERF: Anyone

1 else?

2 COMMISSIONER McCORD: I think that's
3 well stated. I agree with what you are saying.

4 VICE CHAIRMAN VANDERWERF: Would you
5 care to make a motion?

6 MR. MONAHAN: Before that, I would
7 like to just add that the takings issue doesn't go
8 away, just by not regulating, based on the airport,
9 and looking just at the subdivision. Even though the
10 commission may be promulgating a reasonable
11 regulation as concerns the safety of the public
12 health and welfare, that's still not going to
13 preclude a operator who is prevented from drilling a
14 well based on Rule 10 from, at some point -- assuming
15 the commission ordered taking, that can still
16 happen.

17 COMMISSIONER McCORD: I think we
18 recognize that, Tim, but don't you agree that the
19 more rational basis we have and more facts we have to
20 justify what we're doing, the better off we are.

21 MR. MONAHAN: The better off you are.
22 If the commission motion included some form of a --
23 regulating the airport, I would have advised them
24 that I don't think there's been sufficient factual
25 basis established for regulating, based on the

1 airports. There's just been some claim on this
2 7-to-1 ratio, but there's not been much more added to
3 support regulating, just based on the airport.

4 COMMISSIONER ANDERSON: That's the
5 part I am unclear about.

6 MR. WILEY: Should we deal with this,
7 if and when it comes up, on a specific case, or
8 should we be trying to generate rules on airports?

9 MR. MONAHAN: My preference, what I
10 would advise the commission, is to act on a general
11 basis, like the CCI committee is doing right now,
12 trying to take care of these problems on a statewide
13 basis, so that when you have a hearing, all of the
14 evidence concerning public safety, welfare, and
15 health is presented to you so that you can make a
16 clear decision on how you want to address those
17 problems.

18 COMMISSIONER ANDERSON: In fact,
19 there's nothing in the current CCI proposals that
20 deal with airports?

21 MR. MONAHAN: There's is nothing --
22 there's nothing to prevent parties like Mr. Wiley
23 Homeowners Association from, at the same time the
24 commission looks at that proposed rule, from also
25 proposing a rule that handles the airport problem.

1 As a matter of fact, the Administrative Procedure Act
2 gives them that right that when a particular issue is
3 addressed by a state agency, they have the right,
4 under the Administrative Procedure Act, to apply for
5 the commission's consideration of another aspect of
6 that same issue.

7 COMMISSIONER ANDERSON: Is it too
8 late, though, on Industry/CCI -- what I heard this
9 morning, was that -- the assumption that there aren't
10 any more comments on this final draft, there might
11 not be need for a further meeting. May be some
12 addition -- make sure there have to be further
13 meetings.

14 MR. BICKNELL: I would think the
15 opportunities, as described by the attorney general,
16 or -- anyone can bring that forward at the time you
17 consider such rules, you know, wrestle with them
18 then.

19 COMMISSIONER ANDERSON: Do it then, in
20 the hearings?

21 COMMISSIONER McCORD: There will be a
22 30-day interim from publication to our decision.
23 That's when comments will be received and considered.

24 MR. BICKNELL: So it would seem to be
25 more appropriate, to me, to get back into that,

1 through that system.

2 COMMISSIONER ANDERSON: What happens
3 in the meantime? There's going to be an application
4 for a permit; that it's -- within 60 days is going to
5 occur, prior to the adoption of any rules. What
6 happens?

7 MR. BICKNELL: Well, you can probably
8 consider it under all of the available information
9 known to us and we'll make a decision.

10 COMMISSIONER McCORD: One answer I
11 think is that any operator would proceed at their own
12 peril. If we would adopt something in January, for
13 instance, regarding airports, that happens to
14 conflict with what's already going on, what would
15 happen then?

16 MR. MONAHAN: You cannot pass a
17 retroactive rule in the state, or retroactive law.
18 There's a constitutional provision against it, as
19 well as case law against it.

20 COMMISSIONER JOHNSON: I would like to
21 ask Martin, are they under the gun of an expiring
22 lease within 60 days?

23 MR. BATE: No. It's just that that's
24 the drilling program.

25 VICE CHAIRMAN VANDERWERF: Well --

1 COMMISSIONER ANDERSON: I guess what I
2 would do is move that we use Rule 10 as special field
3 rules for this area, period. I don't think there's
4 anything in my motion about drilling permits,
5 otherwise they will be dealt with when they are filed
6 and applications are filed.

7 VICE CHAIRMAN VANDERWERF: All right.
8 Is there a second?

9 COMMISSIONER CAMPBELL: Second.

10 VICE CHAIRMAN VANDERWERF: Any further
11 discussion?

12 (Whereupon the vote was called.)

13 VICE CHAIRMAN VANDERWERF: All
14 right. The motion carries unanimously.

15 COMMISSIONER JOHNSON: I might just
16 add to the homeowners, the transcript is available if
17 you want to review that or take that to your
18 association. You can get a copy of those portions,
19 if that would help.

20 VICE CHAIRMAN VANDERWERF: Also, I
21 will add that we would welcome your participation in
22 a couple of months when we discuss the statewide
23 rules. If you would care to come back and appear
24 before the commission, we would certainly appreciate
25 any input that you would like to give us.

1 COMMISSIONER ANDERSON: Is there a
2 mechanism, if an application to drill is filed, to
3 notify the residents in the area that that has
4 occurred? Are they going to have some way of
5 finding out so they have a chance to object, if they
6 wish to object?

7 MR. BICKNELL: Well, that's why I am
8 saying, that if it shows up with a surface agreement,
9 with the association, why they can be taken care of.
10 There's some very far ranging implications in the CCI
11 process on exactly that question.

12 MR. MONAHAN: On who gets notice?

13 MR. BICKNELL: Difficulty is on how
14 much time goes by.

15 COMMISSIONER ANDERSON: What if Martin
16 files an application before any of this other process
17 occurs?

18 MR. BICKNELL: I understand your
19 concern. They need another lunch hour.

20 MR. MONAHAN: As a matter of
21 convenience, Mr. Bicknell can inform them of the
22 filing of an application, if you want to give him
23 that specific kind of direction. Still, it's another
24 specific treatment of what is, probably, a general
25 problem.

1 COMMISSIONER ANDERSON: Well, that may
2 be, but it seems to be unreasonable not to have the
3 homeowners in the area notified, it's not that hard
4 to tell them.

5 COMMISSIONER JOHNSON: I agree. It's
6 in the spirit of what we're trying to bring across
7 here.

8 MR. BICKNELL: I agree.

9 VICE CHAIRMAN VANDERWERF: Yes, Mr.
10 Wiley.

11 MR. WILEY: I understand that, even
12 though we adopt Mustang Acres rules, that we still
13 have no protection as far as the runway right now.
14 It's just Dennis's interpretation of the permit as to
15 whether it's safe or not; is that the --

16 MR. MONAHAN: No, no. If someone
17 comes into the oil and gas commission with an
18 application for a permit to drill, the director,
19 staff, will look at that application in light of all
20 of the rules and regulations of the state and the
21 field rules applicable to this particular field. If
22 it satisfies those rules and regulations, the
23 commission, the director, should issue the permit.

24 MR. WILEY: So it has federal rules
25 on --

1 MR. MONAHAN: There are no federal
2 rules for permits. These are strictly state rules.
3 There are state general rules concerning the location
4 of wells, and then there are rules that apply only
5 within a specific field; that is what Rule 10 is,
6 here, or whatever the rule number will be for this
7 particular cause. So if the application comes in,
8 and it satisfies general rules, it also satisfies the
9 field rules, then that application should be granted.
10 That's how the director handles applications for
11 permits to drill. He doesn't have -- he cannot allow
12 his whim to decide whether or not the permit will
13 issue.

14 COMMISSIONER ANDERSON: If that's
15 true, I guess I am a little uncomfortable, because I
16 don't know that we have directly addressed, nor do we
17 have a clear policy, yet, on what the commission
18 ought to do or ought to permit with respect to
19 drilling permits near the runways. And if the way we
20 leave it today is, there's no way to continue the
21 discussion on drilling permits, let's say Martin
22 comes in, wants to drill 200 feet from the runway,
23 then, that otherwise conforms with all of the rules,
24 there's no way to defer the discussion of that
25 subject, I think that's a bad result.

1 MR. MONAHAN: By giving -- just
2 telling Dennis that you are not supposed to permit
3 any wells near a runway, may develop into a temporary
4 taking of their rights. The commission --

5 VICE CHAIRMAN VANDERWERF: Yes, Mr.
6 Bate.

7 MR. BATE: I apparently misunderstood
8 Mr. Monahan. I thought that the director could deny
9 an APD if the location for the well created a clear
10 hazard. For example, if the location of the well
11 were the middle of a building, or something like
12 that, doesn't he have that authority?

13 MR. MONAHAN: I don't think that's set
14 out in the regulation.

15 MR. BATE: I don't think it's set out
16 specifically in the regulation, but I understood that
17 that had been done for many years.

18 VICE CHAIRMAN VANDERWERF: Mr.
19 Johnson.

20 COMMISSIONER JOHNSON: That, well,
21 it's my understanding, and I may be incorrect, that
22 we urged the parties to meet, and the spirit of that
23 meeting was that they would try to jointly work out a
24 specific location, re, the Well No. 4 and the runway,
25 that would be mutually satisfactory; is that

1 correct?

2 MR. BATE: That is what we're going to
3 attempt to do, eventually, with respect to Well No. 4
4 and Well No. 5, and any other well we might want to
5 drill there. We are not ready to do that. We don't
6 know if we want to drill yet, much less where, but
7 that is our plan. Our plan is to submit a drilling
8 APD, which the homeowners don't object to, but we're
9 talking about quite a few homeowners there, and the
10 situation could arise where we have submitted an APD,
11 that's the best we can do in terms of avoiding
12 hazards, but they still haven't all signed off on it.
13 Then the question is going to become, should the
14 commission or should the director grant or deny the
15 permit. We're hoping to avoid any kind of
16 confrontation on this point, but that doesn't mean
17 we'll be successful.

18 COMMISSIONER JOHNSON: Before you
19 apply, you plan to get together with the homeowners
20 and with the majority of them, or consensus, and work
21 out the best compromise?

22 MR. BATE: Probably with the
23 homeowners association.

24 COMMISSIONER JOHNSON: How many owners
25 are on your board?

1 MR. WILEY: On the board? There's
2 seven on the board.

3 COMMISSIONER JOHNSON: So you have a
4 majority here?

5 MR. WILEY: We have three of us here.

6 COMMISSIONER JOHNSON: That's why I
7 supported the -- voted for the motion, based on my
8 understanding that they were going to try to get
9 together and not trap Dennis where he has to make a
10 decision without the benefit of their trying to come
11 up with a compromise runway location.

12 VICE CHAIRMAN VANDERWERF: As I
13 understand it, the commission is directing Dennis to
14 give the homeowners notice of any application for
15 permit to drill, so, for this very purpose, so you
16 can try and get together and work out a questionable
17 location.

18 COMMISSIONER ANDERSON: As a practical
19 matter, you are going to notify them anyway?

20 MR. BATE: Yes. We want to try to get
21 them to consent to the location before we file the
22 APD, but they may not do that.

23 COMMISSIONER ANDERSON: I may be
24 worried about something that's not a real problem.

25 MR. BATE: I think it's a theoretical

1 probability we could have a situation where the APD
2 doesn't meet the approval of the homeowners
3 association.

4 COMMISSIONER ANDERSON: My concern is
5 we're going to address this issue, I hope, in a more
6 general way, sometime, January or February. I don't
7 know what the outcome of that will be nor how that
8 will relate to this process.

9 COMMISSIONER JOHNSON: I would like to
10 ask, did Dennis feel we should make -- amend that
11 motion to where, if there not is an agreement between
12 the parties, that they come back to us before the
13 permit is issued?

14 VICE CHAIRMAN VANDERWERF: So it would
15 be heard by the commission again.

16 MR. BICKNELL: I would point out,
17 regardless of what airports are there, and -- Erie
18 Airpark -- it has to meet the requirements of Cause
19 232 or 407, and if you have a problem with that, if
20 you cannot -- if applicant cannot meet that, it
21 automatically goes to the commission. The director
22 does not have the authority to grant a variance/
23 approve application in Cause 232, period.

24 So we're back-- we're working on
25 jelly-on-the-trees kind of stuff until someone comes

1 down with a piece of paper, says it might be here and
2 this distance, then we can look at the runways and we
3 can look at the houses, look at the ballpark and
4 churches -- and we can kick this around all
5 afternoon, but I think it's very hard for us to say
6 something very definitive. I think we have enough
7 guidelines in our existing rules that I know what I
8 can do and what we can't do. We won't do it if we
9 can't. We will tell Erie Park, here's what's coming
10 along.

11 VICE CHAIRMAN VANDERWERF: That --

12 MR. BICKNELL: I will just not approve
13 the thing and send it to you.

14 VICE CHAIRMAN VANDERWERF: Does that
15 satisfy the commission?

16 COMMISSIONER ANDERSON: Yes.

17 MR. BATE: That's what I had in mind,
18 if we submit an application that doesn't meet the
19 approval of Erie Park Homeowners Association, I think
20 it probably ought to come to the commission.

21 VICE CHAIRMAN VANDERWERF: Is there
22 anything further? Any other business today? If
23 there is no further business, the commission stands
24 adjourned.

25 (Thereupon these proceedings were

1 concluded at 3:05 p.m. on November 18, 1991.)

2 CERTIFICATE

3

4 STATE OF COLORADO) ss

5 CITY AND COUNTY OF DENVER)

6

7 I, Harriet S. Weisenthal, Certified
8 Shorthand Reporter and Notary Public for the City and
9 County of Denver, State of Colorado, do hereby
10 certify that the foregoing proceedings were taken in
shorthand by me at 201 E. Colfax, Denver, Colorado
on the 18th day of November, 1991, and was reduced to
typewritten form under my supervision;

11 That the foregoing is a true
12 transcript of the proceedings had; that I am neither
13 attorney nor counsel, nor in any way connected with
any attorney or counsel for any of the parties to
said action or otherwise interested in the event;

14 IN WITNESS WHEREOF, I have hereunto
15 set my hand and affixed my notarial seal this 19th
day of December, 1991.

16 My Commission expires October 15,
1993.

17



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Harriet S. Weisenthal

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