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# ***Commission Meeting***

of

## NEW JERSEY GENERAL AVIATION STUDY COMMISSION

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**LOCATION:** Committee Room 16  
State House Annex  
Trenton, New Jersey

**DATE:** November 20, 1997  
1:30 p.m.

**MEMBERS OF COMMITTEE PRESENT:**

John J. McNamara Jr., Esq., Chairman  
Frederick Telling, Ph.D., Vice-Chairman  
Abraham Abuchowski, Ph.D.  
Linda Castner  
Jack Elliott  
Philip W. Engle  
Peter S. Hines  
Wesley W. Jost  
Suzanne Solberg Nagle  
Henry M. Rowan



*Meeting Recorded and Transcribed by*  
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Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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## APPENDIX:

**JOHN J. McNAMARA JR., ESQ. (Chairman):** Good afternoon. I'm John McNamara, and I would like to call to order the meeting of the legislative Study Commission on General Aviation. It is November 20, 1997.

The first thing that I would like to do is just come around from my left to my right and have each Commissioner state their name into their microphone.

Harry, you can check the level on each mike, and we'll create a record of attendance.

MR. ROWAN: I'm Henry M. Rowan and delighted to be here.

MR. HINES: Peter S. Hines.

MR. JOST: I'm Wesley W. Jost.

MR. ELLIOTT: Jack Elliott.

MR. ENGLE: Phil Engle.

MR. McNAMARA: Jack McNamara.

DR. TELLING: Fred Telling.

MS. CASTNER: Linda Castner.

MS. NAGLE: Suzanne Nagle.

MR. McNAMARA: Are there any-- Was there anyone who would like to raise an issue of failure of notice of this meeting? (no response)

There being none, we'll go straight to the agenda for today, which is to commence our deliberations with respect to our recommendations that this Commission will make to the Governor and the Legislature.

You'll find before you a document which is a couple of hundred pages long approximately. My recommendation to you is that you do not read it. This document represents an interim stage on the second draft. I promised

the Commission that I'd be working assiduously on the writing of this document, but it is not in what I feel is form sufficient to warrant your time to read it. And as we all know, if we read the same document too many times, it's -- you begin to lose a critical eye for it. So I would say, please don't read this document, at least don't read the first 100 pages of it.

The portion of it that is presented to you seriously is the portion that would begin on Page 94. It's labeled "Appendix G -- New Jersey General Aviation Study Commission Review of Pertinent Statutory and Case Law." We had received an enormous amount of technical evidence into our record. We've considered that, but we were asked to make recommendations with respect to statutes. And I think it is important for us to understand, if we are going to observe that responsibility, what the current status of the law is. And commencing on Page 94 and going through to the end of the document is a review that might be the most thorough review currently available. It certainly is the most current review of the statutory, constitutional, regulatory, and case law of both Federal and State nature available with respect to law as it applies to New Jersey's airports.

It was prepared for us by Stephen Ketyer, who is here present, and I've asked Stephen to come today to just bring the Commissioners up to speed with a brief summary of the important points so that the concepts will be explained to us. You may ask questions of Stephen when he's finished. He's not going to take a long time to do this.

And then I would like to, subject to your approval, get into discussion of our recommendations. I should say to everyone here present that

all of the comments that were made about the first draft of the report have been incorporated into the report.

Let the record reflect that Dr. Abuchowski has just taken his seat.

I had incorporated them into the first draft of the report in the typical red-line fashion so that it could be pointed out to everyone that those changes had been made. As I began to enhance this report by reference to studies, which had not been included in the report originally -- many of them are our own surveys that we did-- We did nine surveys for this report, and none of that had been adequately included. The changes that had been recommended by the various Commissioners began to be lost in all of the other changes that were being made such that they are still incorporated in the document, but there was no point in red lining any further because the entire document was changed massively.

With that -- unless there are any comments on this proposed agenda -- I'll just ask Mr. Ketyer to come forward and take about 15 to 20 minutes to make his presentation.

Mr. Ketyer, we have you here with great gratitude to you for-- I know how much time Stephen has put in on this, because he was in my office -- it seemed like every other day -- taking almost all day long to go over the thing. Then he would go back and he'd work and revise the whole thing and come back again. He's given it almost all of his time since September.

Stephen is not just a lawyer practicing law in New Jersey -- and he has been practicing law here for 10 years -- but he's just completed the course work for a master's of law degree in aviation at McGill University in Montreal.

Mr. Ketyer.

**STEPHEN M. KETYER:** Mr. Chairman, thank you, and members of the Commission, I want to say what a terrific honor and pleasure it is to be here and to be of service to this Commission.

This is a very important Commission, and the work of this Commission cannot be understated or underestimated. The future of New Jersey aviation and the growth of New Jersey aviation in this State will depend upon you.

I've completed a study of the relevant case law mostly focusing on New Jersey. Were I to have focused on the Federal case law, this report would be three to four times that size, although I have researched that as well. I hope that in this document I will answer many questions. I am sure I will raise many more than I intended to. This is still-- Also, I remind you and admonish you that this is a work in progress. It will be completed on time, but there are some things that I wish to add, and are fine.

There's some definitions that we have to understand. There is a legal distinction between an airport proprietor, regardless of whether that proprietor is an individual or municipality or county government, and a host municipality in which the airport is located in whole or in part. Think of Morristown and Hanover, where Morristown is the proprietor municipality and Hanover is the host municipality, because as we know, that airport is located in the corporate boundaries of Hanover.

The ability of a host municipality to exercise its police power in regulating what goes on in an airport shall be discussed, but it's limited. When I make reference thus to a municipal proprietor, it should be taken to mean an airport owned and operated by the State, a county, a municipality, or

government or intergovernmental agency such as a port authority. When I say municipal proprietor, for purposes of this discussion think Morristown.

The State Aviation Act that the New Jersey Legislature promulgated has given the goal of aeronautical progress the same weight as it gave the goal of public safety. This is evident through a thorough reading of the statute. Every time you come across the phrase aeronautical progress, public safety is mentioned in the same breath.

The U.S. Constitution reserves to the states the right to regulate within the states matters concerning public health, safety, and welfare. And these are typically concerns of zoning and planning. However, a state cannot or a municipality cannot pass a regulation or a zoning code which conflicts with the laws of the United States under the supremacy clause.

The supremacy clause of the Constitution, incidentally, says this Constitution and the laws of the United States shall be made -- and the laws which shall be made in pursuance thereof shall be the supreme law of the land. In that statement, the laws of the United States are said to preempt local laws. So you will hear a lot about preemption and read a lot about preemption. And just to give you a little background, there are two types of preemption -- actually three, but two for the purposes of this discussion.

There's express preemption where the government comes out and says the Congress will come and publish a law that says, "This law preempts all State and local acts." It is our express intent -- express means written -- that our express intent is to do that. The other, of course, is implied intent where it is left to the courts to determine whether or not the piece of legislation has preempted their acts -- their local acts.

I'd like to point out that during the Reagan administration there was an executive order that had been passed saying that now Congress has to specifically state what it intends to do. Does it intend to preempt state and local legislation or does it not? What does it leave open? So there's been some sort of a clarifying process recently.

As we said, express preemption is the Legislature says, "We preempt this field." In implied preemption, what the courts look to is either what's called field preemption or occupation of the field preemption; that is, there's such pervasive Federal regulation such as airport noise at the source that we're going to declare that Congress intended to preempt this area and that state and local authorities cannot do anything to try to regulate airport noise at its source.

There's also conflict, or obstacle, preemption, which you've heard of I think. Simply, when the law comes into conflict directly with something that's regulated already by the Federal government and then the Federal government's regulations or laws being supreme, the local law must be invalid.

Also, a state cannot or a locality cannot promulgate any legislation or laws that have the purpose, means, or effect of regulating interstate commerce. The commerce clause of the United States says very simply that Congress shall have the power to regulate commerce among the several states. Well, it says a little more than that, but that's, for our discussion, what it says. That's all it says. It's positive law, and it's phrased positively. When the courts review it from the point of the view of the government, it's read broadly. There is a flip side to this statement, however. And the flip side is, where read negatively, "The states shall not regulate interstate commerce." And that is the



dormant commerce clause, and it's a judicial doctrine. It's applied more narrowly than the positive reading of the commerce clause is.

When a court examines whether a statute is subject to the commerce clause, there are two types of tests, and it depends on the nature of the statute. A statute which amounts to simple protections because on its face, or in its clear effect, it discriminates against interstate commerce is per se invalid. On its face, the court will say this cannot stand. This also applies to statutes that adversely affect interstate commerce by subjecting activities to inconsistent regulations.

There was a case, *American Airlines vs. Hempstead*, from the '50s where the city of Hempstead said, "You cannot go below the flight minimums of 1000 feet." And of course, in order to get into, what was then, Idlewild, you had to fly -- your glide path certainly descended below 750 feet. The court said -- this was the 2nd Circuit Court of Appeals in New York -- quite wisely, if we were to give -- this would interfere with interstate commerce if every municipality passed the minimum flight standards, and air traffic would back up.

But what happens when we have a basically neutral statute, one that doesn't appear to discriminate against interstate commerce? The court turns to what's called a Pike balancing test, or an ad hoc balancing test.

Briefly stated -- and this is right from *Pike vs. Bruce Church*, which was a United States Supreme Court case -- "where the statute regulates evenhandedly to effectuate a legitimate local public interest and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the punitive local

benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will, of course, depend on the nature of the local interest involved and on whether it could be promoted as well as with the lesser impact on interstate activities.”

So there is a question as to whether zoning, in and of itself, is a peculiar local interest. At which point, Pike balancing says we’re going to leave it alone. We’re going to let it stand.

So I think you can begin to see that when challenges are made to local municipal zoning ordinances, plaintiffs take a position where they are going to argue on supremacy clause grounds rather than commerce clause grounds. It’s a more effective argument to be sure commerce clause is argued as well as other things, equal protection, and so forth. But those are fall back positions.

The New Jersey Constitution of 1947 grants the Legislature authority to grant to municipalities the right to regulate municipal land use. Such regulation is deemed to be within the police power of the State. You’ll see that term a lot. That particular article of the State Constitution also contains a clause that permits repeal or alteration by the Legislature.

The Legislature delegates zoning authority to the municipalities. It does not abdicate it. It does not abdicate its powers of sovereignty. The police power of the State still resides in the Legislature and not in the municipalities. That’s a very important point to understand.

A municipality may also establish an airport and take land for that purpose subject to constitutional provisions requiring just compensation to the effected land owner -- eminent domain -- and that applies across the board if

a municipality wishes to establish an airport. However, a municipality may not, under the guise of a zoning ordinance, acquire rights and private property which it may acquire only by purchase or eminent domain.

There was a case in 1945 in Newark where the city passed a zoning ordinance saying that buildings and properties within the region of Newark Airport's runways -- the ends I guess -- couldn't -- had height restrictions and things like that imposed. What the Supreme Court of New Jersey said was what you're really doing is you're using zoning to get around the fact that you have really had a taking here. And the property owners had a right to be reimbursed for that unlawful taking. And you can't use the zoning ordinance to get around that responsibility, and they invalidated the Newark zoning ordinance.

There is, of course, a home rule act, the Home Rule Act of 1917, which when you read it in light of the foregoing provisions has been broadly construed by the New Jersey courts to favor a municipality's power to zone. Thus, a zoning ordinance in New Jersey enjoys the presumption that is reasonable. When it comes to court, the court is going to say it's reasonable. The burden is on the plaintiff to prove it's unreasonable. That is to say, this presumption is rebuttable on a showing that the ordinance in question is arbitrary, capricious, or unreasonable.

There was a great case that went to the Supreme Court here, *Ridgewood Air Club vs. Board of Adjustment*, which sustained the Board of Adjustment's refusal to grant the permit for the use of certain lands as a noncommercial airport. Well, the fellow went to the Board of Adjustment in Ridgewood. He may have had, according to the case-- He had some sort of a

blurry photostatic copy of a survey, and he sat before the Board and said, "Well, we want to build an airport." And that's all he gave them. He was the only one to testify. He wasn't apparently represented by counsel. He had no plan. He had nothing on which the Board of Adjustment could hang their hats on. So they looked at him and they said, "Mr. Applicant, we have very grave doubts that you're going to get your airport." And he's appealed to the Supreme Court. And the Supreme Court said the burden is on you to show that these are arbitrary and unreasonable, and you have to produce evidence to that degree.

MR. ROWAN: The burden was on the--

MR. KETYER: The applicant.

MR. ROWAN: The applicant. Yes.

MR. McNAMARA: I would just invite all of the Commissioners to follow Mr. Rowan's example. If you have-- This stuff is sometimes complicated, and if you have questions as we go along, I would recommend them being addressed to Mr. Ketyer immediately rather than trying to hold them. I've been asked, however, by Mr. White to do what I can to control the Commission to limited extent that no two people would talk at once or that the colloquy would proceed in sequence rather than in overlap.

Let me just -- while we're on it, Stephen -- confirm, because it's a very, very important point from our perspective to constitute -- the home rule authority of municipalities is not constitutionally based. It is legislatively based. And when it was granted, the Legislature had the foresight to put in a reservation of right, so to speak, to abridge the home rule authority in instances when they wanted to.

MR. KETYER: That's my understanding of it, yes.

MR. McNAMARA: Okay. Thank you.

MR. KETYER: There's no way to make this entertaining, and I apologize to the Commission. This is horribly brutal stuff, but it's--

DR. ABUCHOWSKI: I'm confused.

Again, on Hank's question, I thought you responded to Hank to say that the Legislature agreed with the Board of Adjustment. Is that what you said?

MR. KETYER: No, the Legislature--

DR. ABUCHOWSKI: Because I'm reading in here it was the reverse.

MR. KETYER: That was a court case. That was a court case.

DR. ABUCHOWSKI: This is different than the case you're describing?

MR. KETYER: The *Ridgewood Air Club* case?

DR. ABUCHOWSKI: Yes.

MR. KETYER: Right.

MR. McNAMARA: Let me just make it simple. In the *Ridgewood Air Club* case, the landowner went to the planning board for his airport and was turned down. He came in with very scanty documentary evidence. He appealed in the ordinary way the ruling of the Planning Board by going into the Superior Court. In the Superior Court, the court said to him it's-- The burden is on you, Mr. Applicant, to prove that the Planning Board's action was arbitrary or capricious or unreasonable or otherwise not in accord with law. So if your Planning Board rules against you, your only recourse is to either accept

it or, if they've been arbitrary, capricious, unreasonable, or taken that action otherwise not in accord with law, you can appeal one of those four or all four to the court system, and the court system will give you justice.

DR. ABUCHOWSKI: Am I reading this incorrectly? It says, "*Ridgewood Air Club vs. Board of Adjustment of Ridgewood* reversing--

MR. KETYER: That's right.

DR. ABUCHOWSKI: --the Board of Adjustment's refusal."

MR. KETYER: It should be sustaining. It should be sustaining.

DR. ABUCHOWSKI: Okay. So that's incorrect?

MR. KETYER: That's incorrect.

DR. ABUCHOWSKI: Okay.

MR. McNAMARA: Thank you, Abe. Good eye.

I'm sorry I took so long on my explanation. I had a better lawyer sitting down the bench.

MR. KETYER: Local zoning power is only, as we said-- I'm going to repeat this. Local zoning power is only a delegation of the police power by the State to the municipality and not an abdication by the State of its sovereign powers as delegated to the several states under the U.S. Constitution.

In New Jersey, the Commissioner of Transportation has the ultimate authority in the placement of aeronautical facilities. However, he must weigh conscientiously the local interests, examine carefully whether proposed aviation facilities compatible with surrounding land uses, and consult local ordinances and authorities in making his licensing decision.

Under New Jersey law, a nonproprietor municipality, which is host to an existing airport -- think Hanover -- must make reasonable

accommodation for such existing legal uses recognizing the importance of protecting and preserving the public interest in air travel. In *Aviation Services*, which was a Supreme Court case in 1956, the Supreme Court held that even though Morristown's airport was located within the boundaries of Hanover--

MR. McNAMARA: New Jersey Supreme Court.

MR. KETYER: --New Jersey Supreme Court, excuse me -- that Hanover zoning ordinance was inapplicable to the airport. This doctrine would be later refined as we go along. Nevertheless, New Jersey-- The courts have been left without clear enough guidance, but the premise has always been and ultimately became to make airports an island of immunity to local zoning ordinances.

Moreover, in each case in which a municipality bars air facilities, that statute or ordinance must be judged on its particular facts to determine if the local action is arbitrary and should be judged invalid. This is an ad hoc system, a case-by-case basis. "If the purpose" -- and this is a quote from *Aviation Services*-- "If the purpose is sought to be achieved or to be thwarted by zoning plans which arbitrarily exclude airport uses from an entire municipal domain, the progress envisioned by the Legislature and stimulated by the State Aviation Act may go unrecognized."

A nonproprietary municipality like Hanover may not exercise its police power to engage in any regulation which (a) has the purpose, means, or effect of regulating airport noise at its source. This rule came from the Supreme Court of the United States in *Burbank vs. Lockheed Air Terminal* in 1973. The city, Burbank, had passed an ordinance prohibiting jet aircraft from departing the airport between 11 p.m. and 7 a.m.

MR. McNAMARA: Stephen, let me interrupt right here.

We're going to read a list here of "may nots" that apply to townships. These are townships that do not own their airport located within their boundaries. It does not matter whether-- It's important for us to understand this as we read this list. It does not matter whether that is a publicly owned airport, such as Morristown owns its airport located in Hanover, or whether it's a privately owned airport, such as Somerset owns its airport located in Bedminster.

Go ahead, Steve.

MR. KETTER: Okay. I'm going to go down the list in the interest of time.

Mr. Chairman, I'll ask you to let me know if you want me to be a little more expansive.

I'm going to describe *Burbank*, however. Burbank is a case that truly defined for the rest of the United States who is in charge of airport noise. The case said that the Aviation Act of 1958, together with the Noise Control Act of 1972, showed that the United States occupied the field in the area of airport noise, remember, occupation of the field in terms of supremacy and in terms of preemption. This area was federally preempted. However, *Burbank* also said the one who is liable for airport noise is the airport proprietor. So as long as the airport proprietor sets regulations that are nondiscriminatory and reasonable, the airport proprietor, and the airport proprietor alone, can set regulations limiting noise. The host municipality can't, the city of Burbank couldn't, and--

MR. ROWAN: I say good.



MR. KETYER: We'll get a little--

MR. ROWAN: All right.

MR. KETYER: --more into that later.

MR. ENGLE: That has changed though now, hasn't it?

MR. KETYER: No, it hasn't.

MR. ENGLE: With the Noise and Capacity Act of 1991.

MR. KETYER: It has, but there's a case right now that's going, and it's not resolved yet whether or not an airport can impose the stages prior to United States saying when they should be imposed. And I don't believe--

MR. McNAMARA: Would you two expand on what you're saying? Why do you think it's changed?

MR. ENGLE: Well, in Airport Noise and Capacity Act, ANCA, of 1991--

MR. KETYER: Yes.

MR. ENGLE: --was passed in October of 1991. Basically it is said that an airport proprietor can not put in local noise regulations which would reduce a capacity on an airport unless they do an economic study, which by definition is very onerous--

MR. KETYER: The--

MR. ENGLE: --or they get the agreement of all the people who are flying into the airport.

MR. KETYER: My understanding of it is that I don't know an airport owner who wants to reduce his capacity, and I-- What you're talking about probably impacts more on the major airports where Stage 1, Stage 2, Stage 3--

MR. McNAMARA: Municipally owned airports.

MR. KETYER: --municipally owned airports. The point is not so much that ANCA-- ANCA really is a bit of a distraction to this discussion. We're discussing the relative powers of an airport owner, whether it's a municipality or an individual, within the corporate boundaries of a nonproprietary municipality.

MR. McNAMARA: Now, that's a good point. Later on we'll come to-- These are nonproprietary municipalities. The next step will be the proprietary municipality. And as far as I know, they-- Even before ANCA, the courts required that if you were going to, as a proprietor, regulate noise, you could only do it on a reasonable basis.

Is that correct, Steve? Is that your understanding?

MR. KETYER: That was my--

MR. McNAMARA: Can only do it on--

MR. KETYER: It really couldn't interfere with interstate commerce.

MR. McNAMARA: Your regulation of noise, even if you are a proprietor, has to be reasonable and it has to be evenly applied.

Okay, I'm sorry. Good point, though.

MR. KETYER: The other thing that a nonproprietary municipality may not do is regulate in a way that excludes uses which are manifestly within the ambit of appropriate primary or accessory uses consonant with an airport operation. That's the way the courts write.

In *The Town of Morristown vs. The Town of Hanover*, they said-- The nonproprietary, Hanover, couldn't regulate such things as runways, taxiways,

hangers, things that were appropriate and primary and accessory to the main use of the airport. However, the door was left open to say, "Well, you can't establish banks or hotels or gasoline service stations that are in conflict with the municipal zoning ordinance."

MR. McNAMARA: In that particular case--

MR. KETTER: It was thrown out.

MR. McNAMARA: --there was a service station, right?

MR. KETTER: No, that's *Shell Oil*. This was actually the last of the published Morristown cases.

MR. McNAMARA: The only thing that distresses me there is the word hotel. Is that your word?

MR. KETTER: No, that's out of the case.

MR. McNAMARA: The court has dicta in the case.

MR. KETTER: If the municipality has--

MR. McNAMARA: The reasons it's of concern to me is that a hotel, a rent-a-car agency, a restaurant -- these would all seem to be uses that are compatible with the intermodal nature of transportation that occurs at an airport. I guess, not to take too much time, the court in this case at least ruled that things that are unquestionably compatible with an airport, such as runways, taxiways, and hangers, cannot be zoned out of the airport. This must surprise people at Solberg and at Bedminster and Montgomery Township where the zoning has sought to achieve just that.

MR. KETTER: You'll find on Page 90 of my draft report a summary of the case, as well as the ordinance that was challenged -- the text of the ordinance that was challenged.

A nonproprietary municipality may not pass a regulation or seek to regulate anything that interferes with the operation of aircraft in flight including takeoff and landing procedures. We've already discussed that in the context of *American Airlines vs. Hempstead*. There was another one, *Allegheny Airlines vs. Cedarhurst*, at the time, an ordinance prohibiting overflight of less than a 1000 feet above ground level. It's preempted by Federal regulation. Also, local zoning ordinances to limiting permissible noise levels for aircraft overflight to protect the public health and safety but interfered or deemed to interfere with interstate commerce and were invalid. You can't interfere with aircraft in flight. That is exclusively Federal domain.

A municipality can't pass a regulation that classifies airports as nonconforming land uses within the--

MR. McNAMARA: Let me just-- Hold it right there. The concept of an aircraft in flight-- The court in that case, I think, referred to it from the point where the aircraft took the runway. I think the judge probably was not familiar with the procedure and appropriately, I think, would be extended to the point where the aircraft-- Well, Federal regulation begins to apply -- is never off an aircraft. We know that. But in terms of its operation, it begins to apply certainly as soon as the pilot approaches the airplane. His preflight responsibilities, his start-up responsibilities are almost all done according to checklists and procedures that are part of the type certification that FAA has given an aircraft. It would start certainly long before engines start. Albeit that the court in this case said that the aircraft is regulated exclusively and thoroughly from the point that it takes the runway, it really I

don't think would be any kind of a stretch for that judge to go back to the point where the pilot approaches the aircraft.

MR. ENGLE: While you're still on that-- You mentioned -- I believe that you said you can't set a noise regulation that, you know, affects an aircraft in flight. Can you set a noise regulation and tell the aircraft pilot, we don't care how you fly the airplane, but meet that noise limit?

MR. KETYER: No. In a word, no. A municipality cannot do that.

MR. ENGLE: Can an airport proprietor, pre-ANCA?

MR. KETYER: Pre-ANCA?

MR. ENGLE: Pre-ANCA.

MR. KETYER: Yes, but it has to be done--

MR. McNAMARA: Very questionable to me.

MR. KETYER: It's questionable, but it has to be done, and the idea is it has to be done in a manner that's nondiscriminatory and does not impede interest to have a substantial effect on interstate commerce.

MR. ENGLE: The reason I asked the question is because we set a noise limit.

MR. KETYER: Well, parachutes--

MR. ENGLE: After doing a study, it showed that most aircraft that were flown with noise abatement techniques could meet that noise limit.

MR. KETYER: Noise abatement techniques are ultimately approved or disapproved, however, by the FAA.

MR. McNAMARA: No, wait a minute. We might be talking about different things.

MR. KETYER: Right.

MR. McNAMARA: The proprietor of the airport can adopt regulations to control noise that are reasonable and are evenly applied. Pre-ANCA that was the law. A noise abatement technique-- When you said we don't care how you fly the airplane, that would be an invasion into an area where the proprietor of an airport cannot go.

MR. ENGLE: That's right.

MR. McNAMARA: But if he just doesn't say that and sets his reasonable noise regulations, that's all right as long as they're reasonable and evenly applied. Noise abatement regulation has often taken the form of flying a particular course. Coming out of Somerset Airport, you make a right turn to avoid the Hyde House, which was one of the cases -- an early case in New Jersey. Coming out of airports all over the nation now, we have different noise abatement techniques including coming out of Morristown and I think Teterboro.

I don't think it is really an invasion of FAA regulation to have an aircraft fly a particular course or to have it fly any particular power setting that's within the type certification. And I don't think that if the proprietor is saying you must keep your noise below a certain level that it's unreasonable for him to say that. You either keep it below a certain level or don't come here. That I don't think-- And that's been allowed. Those are the kinds of regulations that have been sustained.

MR. KETYER: Well, I think for example, something that might come to mind is, if you have an aircraft like an extra 300 or when the props fall forward, it makes a heck of a racket. It will climb best-- It will climb 3000 feet

per minute but -- or, I'm sorry, 10,000 feet per minute nearly. It's a very, very quick airplane. It's a very noisy airplane. And I think a municipal proprietor could say they want you to land and take off with your props relaxed a little. It makes too much noise. I think he can do that.

MR. McNAMARA: A municipal--

MR. KETYER: I don't know--

MR. McNAMARA: --proprietor--

MR. KETYER: I think the proprietor of the airport could say, you know, with an unusual aircraft.

MR. McNAMARA: All he can say is you adhere to the noise standard.

MR. KETYER: Right.

MR. McNAMARA: That's all he can say. Or he can say you adhere to the flight pattern. I think those are the two areas that are reasonable. I don't think he can say you must fly a certain power setting or fly your airplane in a certain way.

MR. ENGLE: What we have said is that we have a 90 DBA limit -- monitored limit with a permanent noise-monitoring system on Runway 24. If you're going to make more noise than that, use Runway 19. You're going to get a delay, but that's a penalty for using a old noisy airplane.

MR. McNAMARA: Mr. Ketyer, Mr. Engle is the Manager of the Teterboro Airport.

MR. ENGLE: And we've said you meet the 90 DBA limit and you're going to take off on Runway 24. We've never been challenged on it.

Enforcement is three strikes and you're out. After a third letter, they're told not to come back to the airport.

MR. KETYER: It's nondiscriminatory. I think it sounds perfectly reasonable emanating from the proprietor of the airport, but it hasn't been challenged yet.

MS. CASTNER: Can I ask a--

MR. ENGLE: For 10 years it hasn't.

MS. CASTNER: --probably a very basic question here? You said that the laws went from the supremacy grounds, when you are debating it in court, rather than commerce. Now, if we're talking about sport aviation or learning to fly versus an air transport or a corporately owned aircraft on a commerce type flight, are the regulations different or judged under different sets of law, or do they have to go back to this supremacy, because a FBO that's running a flight school has nothing to do with an air -- a Part 135?

MR. KETYER: From very early on, the cases have held that an activity like a flight school can become a nuisance.

MS. CASTNER: Well, much more a nuisance when a person's flying the pattern over and over and over again trying to land the airplane--

MR. KETYER: Right.

MS. CASTNER: --and an extra taking off on 200 feet and climbing to 1000. It's much more annoying to neighbors when the wind is coming out of a certain direction at a specific airport and five of your students are out on their second takeoff and landing.

MR. KETYER: Well, perhaps this brings us to the point of this section here -- which is-- Although I'm listing here what they can't do -- what



nonproprietary municipalities can't do, one of the things they can do, and it's encouraged, is rational land use planning around the vicinity of an airport. You don't put schoolhouses at the end of runways.

MS. CASTNER: I guess I was just looking for which law--

MR. KETYER: In terms of-- Well, there is a question in my mind as to whether -- is to how much the flight and, say, in the pattern of the student pilots at a flight school -- as their regular licensed flight school -- isn't preempted because that's the traffic pattern. That's interference with an aircraft--

MS. CASTNER: So the dictation that he was talking about before which was saying what can you tell people-- We absolutely have a pattern that you will fly when you come to the airport because this is our established method of teaching people how to safely use our facility. If somebody that we've taught deviates from that somehow-- I mean it's a continuation of their instruction versus somebody who comes to the field who might be new who just cuts the pattern, cuts somebody off, and lands because he thinks you can do a straight-in approach there.

MR. McNAMARA: I don't recollect the portion of the *Airmen's Information Manual* that specifies it, but just to put it in its legal context, that's-- We all know one of the very few areas where the FAA has abdicated on behalf of the Federal government its exclusive right to regulate aircraft in flight. But it is formally abdicated. Certainly subject to some right of rescission, but it's customary throughout the country and has been for at least half a century for airports to specify their traffic patterns. The FAA instead of challenging that-- Which if they ever did, there is no question. But they could preempt that

field. But they, instead of challenging that or having any interest in doing that, do just the opposite.

MS. CASTNER: I just got something in the mail that was the pattern for the airport, and the question to us was this is our -- something about IFR approaches or something-- And we had to review their review of the airport facility. And they actually asked us to tell them before they printed it in a manual, is this what you are doing there and what you want to do there? So in fact, the owner did dictate what that facility's standards were.

MR. McNAMARA: I'm sure Mr. Ketyer would advise you to keep the letter in which they asked you-- (laughter)

MR. ENGLE: Is that-- Is an airplane on local flight, preempted and is regulated by the FAA -- is that considered interstate commerce?

MS. CASTNER: Yeah, right. There's the question.

MR. KETYER: If it's-- It's-- Boy, that's one of the reasons it's hard to-- And you're approaching it sort of from the wrong end. The right end to look at that, if we turn it around, and we say, is the matter of zoning a peculiarly local interest -- a thing of peculiarly local interest? If a court deems under Pike balancing and under some of the later cases -- you'll see it in my report--

Commerce clause attacks, particularly dormant commerce clause attacks, are under a great deal of attack, and especially at the level of the U.S. Supreme Court. Justice Scalia is not -- and I think to some degree he's right -- real happy with it. And there's a great deal of argument that says commerce clause inquiry should be limited to discrimination, per se discrimination, or discrimination in purpose, means, or affect. And to engage in the balancing

test, which the courts are asked to under Pike and some of its progeny, leaves the court doing what the Legislature should be doing, which is listening to economic experts and listening to-- Well, the Legislature is much better equipped to deal with that kind of evidence and to martial it and to discuss it better than a court. It's left--

The problem and the biggest complaint about Pike is that it's an ad hoc test. It's a case-by-case test, and when you have that, you're going to come up with inconsistent results. The preferred area for plaintiffs, or people bringing actions against municipalities or states, is through the Federal preemption clause. In fact, I would say recently, there have been some cases on equal protection which might be even more satisfactory and result in commerce clause. Commerce clause has been found-- Commerce clause is a strong option. It's not as strong as Federal preemption. And commerce clause may not reach down to the level of local zoning.

And if I think, Mr. Engle-- If that answers your question from that end--

MR. McNAMARA: It is something that the various Commissioners have been concerned about.

I remember that you, Jack, at one point suggesting that local zoning ordinances seem to be an imposition on interstate commerce.

MR. ELLIOTT: That's correct.

MR. McNAMARA: And I guess what Mr. Ketyer is saying is that the commerce clause-- The dormant commerce clause, which essentially says it's the Federal government saying we're going to regulate commerce -- neither the state nor any of its agencies may do that -- actually it doesn't get down to

the level where it applies to the municipal zoning of an airport. Better to follow preemption of the FAA regulation of the aviation field.

MR. ELLIOTT: Does that not say that the Federal government supersedes any local powers in that area?

MR. McNAMARA: Well, yes. That's what preemption says.

MR. ELLIOTT: Right.

MR. McNAMARA: Exactly so. The commerce clause-- There's no question the Federal government rather than the Bedminster or Readington or Montgomery Township or Hackensack or any of the other towns with an airport nearby-- It's the Federal government has the right to regulate interstate commerce.

MR. ELLIOTT: But in New Jersey, has that ever been upheld?

MR. KETTER: No. There is no--

MR. McNAMARA: We don't have a case on it.

MR. KETTER: We don't have a case on commerce clause. The question that was asked of me, Commissioner Elliott, was a very good question. And that is, if you get into your airplane at Somerset, and you fly to Alexandria, and you're not permitted to do-- First of all, it's an intrastate flight. It's not an interstate flight. And is it a regulation that prohibits you from doing that discriminatory in interstate commerce, or is it outweighed by something that is a peculiar local concern?

The State, I believe, can unify the field. The State can preempt municipal zoning ordinances where it's necessary. So your recourse is not there at the Federal level. It's at the State level. You're not going to go to court on that one, unless you say it interferes with rights or regulations that

have been promulgated by the Federal government and are, therefore, preempted. And those are fairly well-defined areas.

MR. McNAMARA: Essentially, the conclusion of all this is that commerce clause attack is not a good one, but the preemption attack goes to the same goal and is effective and has been tried and it's worked.

MR. ELLIOTT: Therefore, it doesn't really make any difference whether it's the State preempting it or the Federal government.

MR. McNAMARA: That's right.

MR. ELLIOTT: The State preemption is just as good as the Federal government.

MR. McNAMARA: Exactly right.

MS. CASTNER: Except if he was flying from Somerset to Alexandria with a load of turkeys--

MR. KETYER: Intrastate.

MS. CASTNER: --yes.

MR. KETYER: Intrastate. Within the State.

MS. CASTNER: Okay.

MR. McNAMARA: I remember in the early days of PSA and, I think, it was Texas Airlines-- They wanted to have those airlines regulated by state agencies rather than by the FAA, because they did not cross into interstate commerce. I think they actually-- Pacific Airlines-- California Airlines got underway without CAB rate regulation, and then it turned out that they were picking up passengers that were coming in from other states and continuing their trips with them. So it turned out that any common carrier

could not hold itself out to be solely an intrastate commerce. It would be deemed to be an interstate commerce and be subject to Federal regulation.

But if an aircraft that's been manufactured by -- according to Federal regulation takes off on an interstate flight, being flown by a pilot that's licensed according to Federal regulation, and lands 20 miles away with a load of local turkeys, it's a case that I don't know the answer to.

MR. KETYER: Well, if it's one municipality discriminating against the turkey farm of the other municipality in favor of its own turkey farm, you may have--

MR. McNAMARA: Interstate commerce.

MR. KETYER: --a problem. You may have a problem there also in terms of intrastate just as for historical purposes.

If you look at the history of Southwest Airlines and Tower Air in Texas, and they were not subject to CAB at the time, a lot of the decisional intrastate law came in with those cases.

DR. TELLING: Mr. Chairman?

MR. McNAMARA: Yes.

DR. TELLING: May I ask that as useful and as instructive as this discussion is that we do try to direct ourselves to the aspects that are directly germane to the charter that the Commission has.

MR. McNAMARA: Yes, I agree.

DR. TELLING: Because the last 20 minutes from my observation, you know, of discussion has really lapsed into, frankly, a number of statements which are not factually accurate or legally based. So if we can return ourselves to a specific discussion relevant to our charter, I think it would be very useful.

And to the Commission, I commend for bringing this to our attention.

MR. McNAMARA: Thank you.

I was just going to say, Steve, it would be best if we moved on, I think, and wrapped this up. So if you could--

MR. KETYER: Okay.

MR. McNAMARA: --continue along.

MR. KETYER: A proprietor municipality like Morristown or a private owner of a public use airport may not regulate airport noise in any manner that is arbitrary, unreasonable, or discriminatory.

You will recall the *Concorde* case. Regulations by the Port Authority of New York to ban the Concorde jet were found to be unreasonably and unduly burdensome on interstate commerce. It may also not regulate any area that has been preempted by state statute or regulation or in any area preempted by Federal law or regulation.

A proprietor municipality which transfers its proprietary control to an airport of another entity may, without reservation, lose its power to impose any restrictions on that airport. There are no cases here in New Jersey, but there was a case in New York City which reviewed this in 1997, *National Helicopter Corp. vs. the City of New York*. There was *San Diego Unified Port District vs. Gianturco*. The state was not held-- The state had formed a local port district -- a port authority. And where the state-- Where the local port districts and the residents of the constituent cities paid the cost of taking air easements under the state act, the state could not exercise proprietary control over the airport.

MR. McNAMARA: In New Jersey, it's significant only to the extent that Newark Airport-- Newark has turned over its proprietary role to Port Authority. Teterboro likewise -- Teterboro Airport. And is Atlantic City Airport operated by a Delaware--

MR. ENGLE: No.

MR. ELLIOTT: South Jersey--

MR. ENGLE: SJTA owns Atlantic City now and is operated by a private operator.

MR. McNAMARA: Okay. So to the extent that these authorities have received a proprietary role, the host municipality -- formerly the proprietor -- no longer may exercise proprietary rights.

MR. KETYER: Municipalities are an equal government entities and therefore enjoyed generally no intergovernmental immunity from one another. The New Jersey Supreme Court has found a legislative intent to immunize acquisition and maintenance of lands and buildings on airports from local zoning power. However, there are limits to this immunity.

A proprietor municipality of an airport like Morristown, for example, which is located in whole or in part in another municipality such as Hanover may not engage in any land use that is nonincidental or necessary for the maintenance and operation of the airport. That was the *Shell Oil* case, where a Shell Oil proposed to build a gasoline service station out on Columbia Turnpike, and they said that's really not incidental or necessary for the maintenance or operation of the airport.

I should point out in a later case, however, the term "necessary" is unusual. There's the *State vs. PTL Construction Company* in Paramus. A



construction company wanted to build a private use helistop on its corporate property. One of the things that Paramus argued was that we have Teterboro nearby and that it's not necessary and not a necessity. And the court said, well, that's not the criterion by what we mean is necessary or necessity and, in fact, it's not so important. The necessity portion isn't so important as whether it's customary an incident to the primary use.

Proprietor municipality of an airport may not engage in a land use that is beyond the ambit of reasonable present or future need. I don't suppose that Mr. Engle could ask to take property so he could land the space shuttle and extend his runway to that degree.

Finally, the municipality or the airport proprietor may not engage in a wholesale aggrandizement of territory -- just land grabbing and putting on those unpermitted uses. Those are warnings that come from some of the very earliest cases. The proprietor of an airport is liable for damages from airport noise to affected landowners.

There was case *Griggs vs. Allegheny County* in 1961 -- I actually believe the case came down in '62 -- that may be a typographical error. In that case, aircraft were flying 30 to 300 above the petitioner's property and takeoff and 53 to 153 feet on landing. The court tried to decide who's going to be responsible for the damages to the property of the neighboring landowners. Is it going to be the aircraft that are flying, is it going to be the airport owner, or is it going to be the FAA which permit the operation of the aircrafts? The Supreme Court said in no uncertain terms it's the airport proprietor -- is the one who laid the runways, who obtained the aviation easements and purchased the property necessary to run that airport, and that if there is a problem with

Allegheny County, they didn't buy enough land. They didn't purchase enough easements.

The airport proprietor has sole liability for-- This is absent any indemnification or any agreements with the State.

DR. ABUCHOWSKI: What about the reverse situation where land and development occurs around an airport and the airport was there prior to the individuals-- (indiscernible)

MR. KETYER: There is a doctrine in the law-- We have the doctrine of nuisance, nuisance as opposed to trespass. Trespass is a question of altitude. How high was the plane over my property? That's kind of a hard thing to prove. In this State, we've tended to go with the majority rule, which is it damages our sound in the tort of nuisance. Nuisance is an activity which arises from an unreasonable, unwarranted, or unlawful use by a person of his own property, working obstruction or injury to the right of another, or to the public and producing such material annoyance, inconvenience, and discomfort that the law will presume resulting damages. That's nuisance.

Now you're saying, well, didn't these people come to the nuisance voluntarily, and that's the defense called coming to a nuisance. Actually, it's a defense that's not that absolute. If I know there's an airport, for example, down the street from me, and I move in, and all of a sudden the airport expands its weight and capacity to such a degree that I didn't anticipate, then the nuisance is increased. And it's only a limited defense that I came to the nuisance. You'd have to show that I bought the property for the purpose of bringing the lawsuit, for the purpose of bringing a nuisance action.

It's funny, because I thought the same-- Been a number of years since I looked at torts, and the same thing crossed my mind in the preparation of this report.

MR. McNAMARA: What you're saying is -- just to make this clear -- if somebody moves next to an airport and subsequently is bothered by the noise made by the aircraft landing at that airport and sues the airport for nuisance that unless the airport can show he bought the land just to bring the lawsuit, the airport is subject to damages?

MR. KETTER: Yes, but mere loss in property value or disturbance in property value is not sufficient to enjoin operations in an airport. Remember, you're seeking not only damages, but frequently injunctive relief. So the plaintiff has a rather heavy burden to show damages. Also, the court is aware that some people are sensitive to noise than others, and the court looks very closely to make sure this isn't the case where someone is a little -- where's there's an incidence of hypersensitivity. These are careful things. But really, you're talking about, I would think, in New Jersey, first of all, a landowner who purchases near an airport receives notice from the Realtor. So to say one has no knowledge -- this is I guess after 1983--

MR. McNAMARA: Nineteen eighty-- No. That was subsequent-- That was the amendment of the law. But today at least the statutory law of New Jersey requires, so the Realtor must notify the prospective land purchaser of the proximity of an airport.

Suffice it to say, on the nuisance business that every one of the nuisance cases looked to the altitude of the aircraft, and the altitude of the aircraft was less than 300 feet in every one and some cases within 80 feet.

Plaster was cracking, chickens were dying, chickens wouldn't lay eggs-- The court looked to, in my recollection, the Federal Aviation regulations. They looked to the 1000 feet above and safe-landing distance in congested areas and 500 feet from person or object. They also looked to the provision for the exception for landing and takeoff. They said that clearly aircraft have a right to do these things. Clearly it's a regulated area. But even if it is a regulated area, essentially there is a certain amount of airspace that the owner of land has -- they call it the superadjacent air -- and it's measured by what a reasonable person can use in conjunction with their land. Up to 86 feet, I guess, the court would say, if you're going to go through that, you're trespassing, and you're going to have to pay for it. You may have to go through it. We are not saying you can't go through it, but if you do, you're going to have to pay for it.

That was the greatest case in Allegheny County, Pittsburgh, Airport. If you're going to kill my chickens because you fly so close to them, you're going to pay for them, too; that was the *Causby* case. In New Jersey, you have cases that say that airports are not nuisances per se. It's not automatically a nuisance. The airport has to do something else. If you want to build an airport and somebody comes to court and says can't do that because it's going to be a nuisance, the court would say they're not nuisances per se. We've got law on the books that says so.

Don't want to steal your thunder, but I did want to move it along a little bit.

MR. KETYER: Okay. Notwithstanding approval by the Division of Aeronautics, a private individual or corporation may not establish a private use landing area for fixed-wing aircraft or a helicopter or helistop on its

property if an existing local ordinance expressly prohibits that use. There are a couple of cases where the ordinance permitted reasonable accessory uses. It was silent as to say no heliports or helistops, no landing fields. And the courts permitted the placement of these as reasonable accessory uses. So a municipality has to expressly prohibit those uses. And as I said, in the absence of an expressed prohibition, the courts will likely consider such a use to be an appropriate and lawful accessory use.

State and local government efforts to regulate the location of helistops are not preempted by the Federal government so long as local regulation referred to does not directly affect actual aircraft operations. *Garden State Farms* said, "We don't think the occupation of the field and the necessity of uniform regulation of the flight of aircraft trickle down to private use helistops, but it is still subject, of course, to State regulations and municipal zoning ordinances."

In other jurisdictions, the inability of-- I'm sorry, I've already made this point, and I want to reiterate it. The Commissioner of Transportation has the ultimate authority as to placement of aeronautical facilities. That is also out of *Garden State Farms*, but it's subject to the consultation of local officials and consideration of local objections.

DR. TELLING: Could I just ask a question? A moment ago I understood you to say that if your municipality had an express ordinance saying it may not permit a helistop, then the Department of Transportation's Secretary is-- The power is not ultimate.

MR. KETYER: Well, no, I believe that the Department of Transportation can overrule the local zoning ordinance. If he comes up-- As

long as he's not arbitrary, unreasonable, or capricious. Incidentally, you're right. It's foggy, and this is one the-- This is part of the confusion that will come out of these cases.

MR. McNAMARA: One of the reasons for going into this particular area here about these, *Garden State Farms*, the *PTL Construction* case, is that this Commission may think the right thing to recommend to the Legislature that some clarifying legislation be adopted in this area. I would say that there is case law to go on two roads. One is that if a applicant-- Let me just make three cases.

If the applicant applies for the license of an airport in the State to the Division of Aeronautics and there is no provision in the local zoning ordinance proscribing that use, the presumption is he will get that license, and when the township tries to fight him in court, the township will lose.

The applicant goes for an airport license, in the second case. The township has an ordinance that says no airports. The Commissioner of Transportation comes out, he takes into account the local zoning ordinance, the local situation of that particular location, and makes a determination with all of this in mind that this is a safe and appropriate use. The Commissioner of Transportation can overrule the local zoning ordinance.

In the third case, all the facts are the same as the second, and the court says no because they had a case on the books. The law of New Jersey is not absolutely clear on the second and third cases. When they have an ordinance on the books that proscribes airports, in some cases the law has said the Commissioner can overrule that and was dicta in *Garden State Farms*. And

in other cases, it says, no, he can't have the airport. And so it's foggy. It might be an area that this Commission wants to address.

MR. KETYER: I would say, however, that at this moment the courts are using heightened scrutiny to look at limitations on airport expansion or things that would unreasonably not accommodate into present anticipated uses of the airport that are reasonable. How much heightened scrutiny I don't know. These are matters that also have political ends to them, and they're hot potatoes.

MR. McNAMARA: Why don't you do that 9th Circuit case, then we'll wrap it up -- at Burbank-Glendale.

MR. KETYER: Okay. There is ample evidence that in other jurisdictions there is clearly an inability of the courts to detect lines of authority, and it's led to conceptual confusion and inconsistency regarding land use and zoning in regard to airport land. If the placement and design--

There's a case in 1992 which was the *Burbank-Glendale-Pasadena Airport Authority vs. City of Los Angeles*, and the city of Los Angeles wanted to approve the plans to expand the runways and the taxiways. The 9th Circuit came down-- The Federal 9th Circuit came down and said no. These are clearly-- And what they said was runways and taxiways are critical to the safety of takeoffs and landings and essential to the efficient management of the surrounding airspace and municipalities cannot make attempts to regulate their placement and design, that that is invalid.

There was a case in Ohio in 1995, however, where a district court -- Federal district court -- said runway placement and design only has a tangential effect on the runway. Now, this case offered no reasoning to come

to that conclusion, and it was a widely criticized case. It still stands because the case itself was settled, and it never went up to the 6th Circuit for review. My own feeling, whatever good it is, is that it would not have survived in the 6th Circuit -- that that statement would not have -- among other problems with effects in the case.

If a flight begins when an aircraft takes the runway, when it falls under Federal control -- Jack, of course, would have it go a little further than that -- then the Ohio court's conclusion is inherently contradictory, and it cannot be satisfactorily explained. It's confused.

I'm going to close with a quote from Judge Rosenberg at the Chancery Division when *Garden State Farms* was still at that level. He said, "While it may be well that a unified system of laws preempting all land use power for aeronautics would best serve the interests of the people of New Jersey, such a policy decision should be made by the Legislature and not by the court."

MR. McNAMARA: Well, I think we concur.

Mr. Ketyer, we can't thank you enough. The time that you've put in on this has been enormous, and the help that it will give us will be significant.

MR. KETYER: Thank you, Mr. Chairman.

MR. McNAMARA: Thank you.

For anyone who has any questions about what Mr. Ketyer has addressed, the last 108 pages of this document you have in front of you is the long version that sets and it-- I believe it refers to and organizes into themes



virtually every case that's been tried in the United States that would affect New Jersey, as well as every single case tried in New Jersey affecting aviation.

MR. KETYER: Let me just clarify that. I've covered cases that directly affect New Jersey at the Federal level. All Federal cases, this document would be 500 pages.

DR. ABUCHOWSKI: I have a burning question. I just need to have an answer. Given all this case law surrounding authority over airports, why isn't many of the issues that are currently being fought by the airports, certainly collectively in spending millions of dollars, simply summary judgement issues?

MR. KETYER: Many of them are, in fact. They go to the court as summary judgement issues. Certainly that Ohio case did, and so did *Burbank-Glendale-Pasadena*. Many of the cases are summary judgement cases.

DR. ABUCHOWSKI: I guess I'm thinking of the Somerset issue where the local authorities are not allowing hangers being built, and yet I clearly see in here that that is not within the purview of the local authorities.

MR. KETYER: That's my understanding.

DR. ABUCHOWSKI: And yet they are fighting this in court continuously.

Again, I'm asking also the Chairman, why isn't it a summary judgement issue?

MR. McNAMARA: I believe that the way-- And I'm not familiar with that litigation, but -- except remotely -- but I believe that most of the publicity of the *Somerset vs. Bedminster* issues arose out of proceedings before their Board of Adjustments and their Planning Board, and that Mr. Walker

tried to resolve the issues before those boards on appeal from those boards. I don't believe he made any application to the Commissioner of Transportation, which was the appropriate form by way of exhausting the administrative remedies. When it got to-- I don't think that these actual issues got into court.

Do you know, Steve, whether they did?

MR. KETYER: I don't know. I've been dying to find out about that case.

MR. McNAMARA: I don't think that they have, and it may be that if his attorney gets hold of some of this research that that matter will be dismissed summarily.

MS. CASTNER: Their hangers were built.

MR. KETYER: I'm sorry.

MS. CASTNER: Their hangers were built.

MR. McNAMARA: The hangers are up now. However, the price paid was probably unreasonable.

However, thank you, Mr. Ketyer, very much.

MR. KETYER: Thank you.

DR. TELLING: Mr. Chairman, before Mr. Ketyer retires-- I don't know what you have outlined or planned for the rest of the day, but one of the things that I think would be useful is, if you plan to address any of the recommendations here, if we could walk through in a sense -- be sure we understand them based on the assessment of law at the moment. You know, are these appropriately considered recommendations as they currently stand,

and what other issues are relevant to them that we might have missed in our development?

MR. McNAMARA: All right.

MR. KETYER: I will address--

MR. McNAMARA: Steve, why don't you sit. You have the time, don't you?

MR. KETYER: Yes, I do.

MR. McNAMARA: Are you in a hurry?

MR. KETYER: No.

I've addressed these--

MR. McNAMARA: Why don't we do it this way. We'll just go through these recommendations one at a time.

MR. KETYER: I would at this point say that these are recommendations in form. Jack has made me push 250 to the outer marker on preparation of this, so I'm really-- A lot of this is sinking in and a lot of this is going through refinement, and for me to pursue at this moment precise recommendations -- I'm still formulating them.

DR. TELLING: Well, if you'll excuse me, I wasn't suggesting that you formulate precise recommendations. I was asking for your guidance in light of your assessment that you've done to date. It is the Commission intent to form recommendations and then seek guidance whether they are appropriately structured.

An example of what I have in mind is in the first one. It strikes me this is principally a matter of tax law, not aviation law, which is what you've focused on. I don't know if your research is germane and hence whether or not

you want to make a recommendation. But it's that sort of assessment-- I thought, if we walked down this, you could help enlighten the Commission in view of your research about whether or not your research is relevant to the recommendations, and if so, in what way would your research suggest that we might perfect it.

MR. McNAMARA: Let's do it this way--

DR. TELLING: So that would be my request.

MR. McNAMARA: What I was going to say is, if you have the time, why don't you just sit right there. You have a mike right in front of you, and we'll go through, as we were planning to, the recommendations that are -- the points that are put in this document under recommendations of Commission -- on small Roman vii -- in the beginning of the document. And as we discuss them, if you have thoughts on them, would you please make your comments.

DR. TELLING: That would be helpful.

MR. McNAMARA: Okay.

And let me start off by saying that one of the criticism of this document--

DR. TELLING: By the Chairman, I gather.

MR. McNAMARA: No. I think it was by Jack Elliott. I don't know who -- probably not significant -- was the recommendations of the Commission section of the document should go at the end of the document. I don't disagree with that, and I think that we do have a section at the end of the document, and we can very easily just eliminate these pages.

MR. ELLIOTT: Well, I felt it was redundant.

MR. McNAMARA: Right.

MR. ELLIOTT: It was at the beginning and it was also at the end.

MR. McNAMARA: Right.

MR. ELLIOTT: I felt it should be in one place and it ought to be at the end. After you discuss everything, then you make your recommendations.

MR. McNAMARA: Okay.

MR. ELLIOTT: Not before the discussion.

MR. McNAMARA: And to that end, the document in this form will be altered--

MR. ROWAN: I don't agree with that.

MR. McNAMARA: You don't agree with that.

DR. TELLING: Neither do I.

MR. KETYER: No, the executive summary and the recommendations should be up front.

MR. ROWAN: I think we ought to say we done this, here is the recommendations, and here's the supporting data.

MR. McNAMARA: Right.

MR. ENGLE: And when you really think about it, the legislators will probably read the executive summary in the recommendations.

MR. ROWAN: That's about it exactly, yes.

MR. McNAMARA: Okay. So the consensus is that they stay.

MR. ELLIOTT: In both places or just in front?

MR. McNAMARA: Well, in the end, they are set forth in great detail and sort of the reasoning of the recommendation is set forth in the end. And this is just the bullet-point recommendations.

DR. TELLING: Mr. Chairman, what I would like to -- if it's consistent with your plan for this afternoon to make sure we've reviewed all the recommendations because this is the first time the Commission in quorum has had a chance to meet together and discuss them, I think, in a group -- substantively, first, to arrive at what we think are appropriate ones and whether there are any others. So if we can continue with this and then discuss how we might handle any further revisions to the document.

MR. McNAMARA: That's exactly what we're going to do.

DR. TELLING: Right.

MR. McNAMARA: So let's start. The first-- And by the way, these are recommendations of the Commission. That title is there only because we had to get some focal point around which to rally. These recommendations have been made by various Commissioners or I have added them because I had thoughts about them which would be my recommendation. These have no standing at this moment. These are just everything that I could find that was recommended directly or indirectly is in this list. There may be others, but nothing in this list is sacrosanct. So we will consider each one of them. I would like to ask a Commissioner to move each one of them, and we will adopt them by majority vote, if that meets with everyone's approval.

MR. ROWAN: Adopt them in this form or adopt them?

MR. McNAMARA: Adopt them at this meeting.

MR. ROWAN: But in this form?

MR. McNAMARA: No. No. In whatever form we amend them to be in the course of this meeting.

MR. ROWAN: Okay.

MR. McNAMARA: Okay. And then my thought is to complete the revisions to the second draft of the document incorporating these recommendations as revised at this meeting and hope to get that document to everyone by the beginning of December. And then I would ask you to read that document in detail. I would anticipate there would be minor revisions, and we'd get our final document submitted to our Governor and our Legislature, hopefully, prior to the end of the year.

DR. TELLING: Point of order, Mr. Chairman. If it would accelerate the work of the Commission, I would suggest we could suspend the rule of moving each one of these at the point in time because, first of all, I think we need to understand them as a group, discuss them, and have discussion. Then based on that, this being the proposed language, if this is what we're going to use, find or suggest perfections. Then at that point, we could move what we believe is the appropriate language we intend to move and then take a vote, if that would help matters.

MR. McNAMARA: I don't really care how we do it.

DR. TELLING: Okay.

MR. McNAMARA: I'd just like to get to it.

The first is amend the New Jersey tax law to alleviate the real estate tax burden on airports, exempting all land, buildings, paved areas, and other improvements dedicated to aviation uses. Comments on this?

MR. ELLIOTT: That arouses a question of whether you're saying profit-making facilities should be tax exempt such as hangers which earn a profit, tie-down areas which earn a profit, and what is the basis for claiming tax exemption on profit-making facilities. I think that would be opposed, and we'd probably would lose that point.

MR. McNAMARA: Okay. Now, I think there are two considerations. One is the public use nature of the airport, like a road, should be a public expense. And the other is that publicly owned airports in competition with privately owned airports pay no taxes. Now, I believe--

I need some help, Phil, that the FBOs at Teterboro would pay taxes?

MR. ENGLE: No, they do not.

MR. McNAMARA: They don't. So all the hangers at Teterboro and all--

MR. ENGLE: From real estate are tax exempt. All the hangers are owned-- All the facilities, every hanger is owned by the Port Authority. The Port Authority retains title to the buildings.

MR. McNAMARA: And at Morristown?

MR. ENGLE: I don't know about Morristown.

MR. HINES: I know at Trenton property owners pay taxes.

MR. McNAMARA: Property owners do pay taxes?

MR. HINES: Buildings, yes.

MR. ENGLE: I know at West Chester it's a county-owned airport, and at West Chester the buildings are taxable.

DR. TELLING: Right. They are privately owned and taxable.



MR. HINES: Phil, at Teterboro does the Port Authority pay taxes as such or make any kind of a contribution to the local communities?

MR. ENGLE: The enabling legislation of the Port Authority, what I believe it says, is that if the Port Authority buys a piece of property or takes a piece of property, if the Port Authority elects, they may make an in lieu of tax payment; however, that tax payment cannot exceed the taxes that were paid on the property on the date of taking.

MR. HINES: Okay. That's taking of the land, but what about the existing property? You pay anything--

MR. ENGLE: That's-- The Port Authority bought that property, and the same thing would apply.

MR. HINES: In lieu of that-- You are making it in lieu of tax payment?

MR. ENGLE: In lieu of tax payment is being made to the communities, yes.

MR. HINES: Okay. So in some fashion there is a tax being paid?

MR. ENGLE: Yes.

MR. HINES: Okay.

DR. TELLING: If I recall the testimony, though, that we had, it was minor in the opinion of surrounding municipality, but I do think that No. 1-- I don't-- I'm trying to find out where in this document it was, but this was one area that the Commission did debate earlier. I think the suggestion made earlier that this should read "exempting all public use land" would have to be made in this to begin to make this even politically pass the ha-ha test. But we did have a document that was prepared earlier with McCarter and

English's help that basically built the legal case for this as an approach. So I would suggest that this could be perfected, but right now in its current form, it would be a problem. You've got to at least specify public use land, and that's going to be the basis for trying to argue.

Mr. Elliott's point I think is -- still remains. It will be a political football whether or not this will get granted for what are still basically profit-making operations, but at least I, as a Commissioner-- I had sensed that this was one area where the Commission debated in some length and thought this was the only kind of appropriate major property relief we could try and get for the privately held airports in this State. And it was appropriate to do so.

MR. ROWAN: Mr. Chairman?

MR. McNAMARA: Mr. Rowan.

MR. ROWAN: At this kind of detail, we may never get through it, but there's always the stigma of tax-free land. A farm property is run for profit, and there is a tax reduction for farm property that is reasonable and makes it possible to farm. So the farm wouldn't exist if we had to pay the full real estate taxes, and the same might be true of airport operations. We might have a better chance of getting it through and getting it passed if there were a special airport-exempt tax, which was at a lower rate rather than at the full burden of the local developable land.

MR. McNAMARA: I think that-- Is there a problem with that though that farmland assessment is a constitutional amendment?

Do you know, Steve?

MR. KETYER: I don't know off the top of my head.

DR. TELLING: Yes, it was. This was covered in the Commission's testimony last year. Again, there is a legal brief on this which is missing from this report. I don't know what and all of the revisions was done, but it has disappeared.

MR. McNAMARA: No, it's not. It's part of our evidence. This report in no way includes-- We have 10,000 pages of evidence. This report couldn't possibly include all of that.

DR. TELLING: My suggestion is, for the strength of the report, the logic and the brief should be referenced in the text, and the logic and the language used in the brief ought to be the language which perfects the recommendation. That's all I'm suggesting.

MR. McNAMARA: Okay. Okay, and I agree with that. That's a good point.

Let me just ask some questions. The specifics of an airport-- Are we in agreement that runways, taxiways, ramp areas are -- should be exempt?

MS. CASTNER: No.

DR. ABUCHOWSKI: I'd say the rest of the land should be exempt not just the runways and taxiways. All the underlying--

MR. McNAMARA: No. No. I'm taking them one at a time. I'll come on to the land, and etc., later on, but I want to know at least the runways, the taxiways, and ramp areas.

MR. ELLIOTT: Well, the runways should be exempt, I believe.

MR. McNAMARA: Okay.

MR. ELLIOTT: Unless they're charging a landing fee, and the privately owned airports don't get any landing fee; therefore, I don't think they should pay any taxes.

MS. CASTNER: You know, we did discuss this in -- really in depth, and I have-- Of all the meetings we've been to, this is one I went back home and sat down and talked and went over the brief that was really well prepared.

This could end up causing much more problem for a privately owned facility because of what Mr. Rowan brought up. We're already fighting a lot of battles, and now to say that you're trying to run something for profit and you're getting on top of that you don't have to pay any taxes-- Even the grants that we're getting now, when you sit down at the public hearings, that we're all going through at the moment, that are applying for those grants-- "Where is that money coming from? What do you people have to pay?" That is the major question. They want to make sure that the 90 percent that's coming from the grant is not coming from any money that could have gone to something that they wanted other than airports. Now this would take the heart of the issue and say, you know, we really can't make money at this. "Well, okay, if you can't make money at this, then we're going to help you because of what?"

We went into that railroad discussion. As an airport owner, I think I would not want to fight the burden with the community that we are totally tax exempt. And the small portion of your tax bill that relates to that runway that's 3000 feet, or whatever your runway is, is minute compared to--

MR. McNAMARA: What--

MS. CASTNER: --the 500 acre--

MR. McNAMARA: What would you have exempt from real estate taxes?

MS. CASTNER: Well, we had a discussion kind of going on some type of benefit to the municipality. We had talked about a benefit to the municipality for enhancing the operation of a facility. A township that had two airports like Alexandria does there might be a tax credit or something that's given to the municipality for helping them. We had discussed a whole lot of stuff, but this-- I will never remember a majority decision on let's just exempt it. I am not for that at all. And I don't know what the exact answer is other than I do know that that report had gone specifically through the legalities of it and had basically told us that the railroad thing was one that had some--

MR. McNAMARA: Basis.

MS. CASTNER: --basis for it. But this is the ha-ha test--

MR. McNAMARA: But you told us that if you went that route it would raise your taxes.

MS. CASTNER: No. I'm one of the people who said we're already farm assessed on everything right up to the runway and have been for years, and I bet my taxes are lower than some of you are paying for your home.

MR. McNAMARA: All right. That's good for you. Now let me ask you, if the Solbergs get a grant and they put in a \$20 million improvement of runways, taxiways, ramp areas, all public use areas -- clearly an enormous benefit to the State and to that local areas, there would be some increase in

business. We don't know how much. Are you suggesting that they would pay their 3 percent of \$20 million annually?

MS. CASTNER: I'm suggesting that if -- and I don't want to speak for Suzie-- I'm saying that I have always looked at the Solbergs as just a bigger version of the Fritsches, and that we only have 400 acres to worry about and the poor Solbergs have -- I shouldn't say poor -- the opportunity to take 700 acres in that prime spot and do something with it is much more pressure than there is on us for 400 acres. But how much of that 700 acres is used for protecting the facility, and how much of it is runway? They have a much bigger burden on their taxes for the supporting acreage than they do for the runways.

MR. ELLIOTT: They already get consideration -- tax consideration on that acreage.

MS. CASTNER: Sure, just like-- Right. A smart person is doing that.

MS. NAGLE: Because it's farmed?

MR. ENGLE: That's the basis.

MS. CASTNER: And that's a very low, very low rate.

MR. McNAMARA: That's going to be more and more difficult for you to maintain, and then you may honestly farm your land.

MS. CASTNER: So the rate, as he was suggesting, should not be exempt, but should be cited as closer to a farm exemption.

DR. TELLING: Which was one of the things--

MS. CASTNER: That was brought up.

DR. TELLING: Sorry to interrupt. Back to the problem.

MR. McNAMARA: What had one--

MR. ENGLE: Did you make a recommendation that all of the airports should state that available land that they have is growing some kind of crop on it, be it wheat or whatever?

MS. CASTNER: Well, because it's hard to find a farmer to do it.

MR. McNAMARA: I think that's nonsensical.

MS. CASTNER: Yes, it is not-- That's going backward a little bit.

MR. McNAMARA: I think you're making an airport owner be a farmer.

MS. CASTNER: Right.

MR. McNAMARA: And it's awfully darn difficult as a farmer, well, as a lawyer who is a farmer, to keep that farmland assessment.

MS. CASTNER: Right. No. I agree with that.

MR. McNAMARA: I mean, I can do it as a hobby, but you got a guy that's trying to make a living as an airport operator, and you're making him go out and drive a tractor and harvest wheat. This is nonsensical.

MS. CASTNER: But let's go back to this--

MR. ELLIOTT: All you can try and do is lease it out to a farmer. And some airports have done that, and it brings them revenue.

MS. CASTNER: But let's go back to the initial recommendation.

MR. McNAMARA: Do you know what's happening today with that? These farmers are coming in and saying not only are you going to pay me all of my expenses to come in and harvest your crop, but you're going to pay me a certain portion of the tax you save in addition.

MR. ELLIOTT: Then it isn't worth doing.

DR. ABUCHOWSKI: No. Why not simply establish the code that the airport tax is the equivalent of the farm tax. Period. Why do you have to go farm?

MR. McNAMARA: I think the one reason for that is that if you're going to go to a farmland exemption type of taxation, you have to have a constitutional amendment, which we won't get. They-- If you--

DR. ABUCHOWSKI: So it's more difficult to get a lower tax than you think it will be to get no tax.

MR. McNAMARA: Yes. You can exempt a class equally, but you can't lower the rate for some reason.

MS. CASTNER: Well, we also discussed the property in that same brief. We discussed the property development rights, and that selling the development rights meant that you did not have to go into this exemption. The property--

DR. TELLING: Is an alternative?

MS. CASTNER: Yes.

DR. TELLING: Right.

MS. CASTNER: Yes.

DR. TELLING: Well, these two recommendations--

MR. McNAMARA: That's another option as we go down here, as you'll see.

MS. CASTNER: Well, I don't think you give them-- Well, I don't know. I'm not a lawyer, but I know -- thank God -- but I know that the burden of simply getting something for nothing in a community where everybody is striving hard to make a living is not a burden that an airport



owner should have to take on now. And I think exempting them from the tax, man, you know, that's a big burden to carry.

MR. McNAMARA: You remember when Jack Elliott and his Committee did their research on why airports closed, which was our No. 1 assignment in this Commission.

MS. CASTNER: I was on that.

MR. McNAMARA: The reason most often given and the No. 1 conclusion of that Committee was that real estate taxes were the killer.

MS. CASTNER: It was highest and best use. Highest and best use. It was not real estate taxes per se. It was highest and best use.

MR. McNAMARA: No, it was not. It was-- I beg to differ with you.

MS. CASTNER: What was it, Jack?

MR. ELLIOTT: I think it was a combination. I don't think it was any one thing.

MS. CASTNER: Yes.

MR. McNAMARA: If you had spoken with, I think, four or five people who had closed airports, and 80 percent of them had cited real estate taxes as being the reason.

MR. ELLIOTT: Well, it was true. There were several that closed, and one example was Totowa-Wayne. They doubled his taxes. Didn't put him out of business, so they doubled it again the next year. That put him out of business. There were several like that.

MR. McNAMARA: Yes.

MS. CASTNER: But the majority was the driving force behind the airport. The good old guy was gone, and that the highest and best use for the family or whoever was next was to sell it and get out of the business.

MR. McNAMARA: That was my surprise that I don't recollect-- I mean I don't recollect it that way, and I do recollect that I'm surprised that it wasn't that way.

MR. ELLIOTT: There were some like that.

MS. CASTNER: I think--

MS. NAGLE: Can I say something? There's a problem because -- and we've talked about this numerous times, that privately owned airports are at a disadvantage. Privately owned-public use airports are at a disadvantage over the public use airports, because when we had your host municipality and, I think, I was one of the people that asked them how much money they actually got, it was minuscule compared to the operation that you have. And then you have airports like, I think it was, the Danny Walker, at Somerset, that said they paid at least -- I don't know, was it \$1000 or \$2000 a week?

MR. McNAMARA: Yes.

MS. NAGLE: I mean it was a sizeable amount of money for a relatively small acreage of land. So I think that was what Jack McNamara was trying to accomplish here, was to try and equalize privately owned airports with the publicly owned airports. And the question is how to do that. We had talked in my survey -- we had talked about the airport preservation program treating airports like the farmland preservation, and a lot of the airports were receptive to that idea.

So I don't know. I mean, I know exactly what Linda Castner is talking about because it would be a very sensitive issue if our airport did not pay property taxes.

MR. McNAMARA: I think, as I recall, the survey that was done of host municipalities, which by the way is in this, they-- A great majority of the host municipalities did not feel that the airport was any significant source of revenue for the municipality. They didn't think it was either a source of revenue or a source of economic activity. If that's the case, then the great majority of these municipalities cannot complain exceedingly for a minor loss.

MS. NAGLE: That message won't get through.

MR. McNAMARA: It's not--

MS. NAGLE: That message has no chance of getting through.

MR. McNAMARA: It's not a message that-- I mean, it's not something that has to get through from this Commission to anyone. It's just that that's what we discovered. We did a survey. We did it honestly and-- Let me see if I can find the results of it.

MR. ENGLE: More than that, once the Commission's report hits the streets, the people like the League of Municipalities who are going to be going through this thing, and they are going to be talking to the Readingtons and the Bedminsters and a lot of the other towns, and you see what they're doing-- You have to type this. What chance does it have of getting to the Legislature? And I think that's one thing that we have to look at.

DR. TELLING: I think it's important though that, again, we're not going to obviously accomplish this today, but I think it's critical that we meet and first perfect what it is we think we wish to recommend consistent

with the testimony and be able to clearly articulate the arguments in favor of it and then vote as a Commission. Some of these-- There may be Commission recommendations we are going to make that would be politically warm, if not hot. But ultimately, that's the choice of the Commission. I mean, a one-on-one debate on that I don't know if it's doing any of us any real benefit.

MR. McNAMARA: This is-- Don't misunderstand this as a one-on-one debate. This is a Commission discussion, and I'd like to get some resolution to it.

Let me just read you this question. Question No. 3: Does the airport make a significant revenue contribution through taxes to your community? Fourteen communities stated that their airports make little or no revenue contribution to their communities. Only one community response indicated the contribution could be considered significant. In response to the question does the airport make a significant revenue contribution through taxes to your community: ten communities, none; four communities, little; no communities, moderate; one community, significant. So little to none was fourteen out of fifteen.

MS. CASTNER: But are they the ones that don't pay taxes? You can't say none for two people sitting right here who do pay taxes.

DR. ABUCHOWSKI: But this was adjacent communities and host communities.

MR. McNAMARA: No. This is the host community survey.

DR. ABUCHOWSKI: Yes. The host communities on record have stated that they don't get any significant taxes.

MR. McNAMARA: Pete, you--

DR. ABUCHOWSKI: How could they come out--

MR. McNAMARA: --were the one who collated this, right?

MR. HINES: Yes.

DR. ABUCHOWSKI: How can they come out now and say, "No, we didn't mean that. We are going to lose significant taxes"? You're talking out both sides of your mouth.

MS. NAGLE: Yes, but the host communities don't want to lose any revenue.

DR. ABUCHOWSKI: That's a different issue. The point was they don't consider it significant. If we're going to argue whether insignificant revenues should not be lost and that insignificant revenues are more important than public use environment, I mean, that's a pretty ridiculous argument. Insignificant revenue is by definition insignificant.

MS. CASTNER: All right. Let's assume you're completely correct. Totally right that there were three people or one person at each of these municipalities that filled that form out and said that. One person or three people out of all of them that's less than fifty people, right, less than one hundred people, whatever. Now the next election comes along, and they're not even on the committee anymore, or after this report comes out, they are voted off the committee. All right. What have we left as contributors to this Commission knowing the burden, knowing the gut -- absolutely the cut burden of what this does to the airport owner?

DR. ABUCHOWSKI: I think-- I don't think that-- I'm not sure it-- I'm still confused that it will do anything for the airport. You're assuming that you will continue to fight your tax situation if, in fact, the State provides

for tax relief to airports. It seems to me that you're arguing the point that you're still going to fight the townships over the taxes.

MS. CASTNER: No.

DR. ABUCHOWSKI: And I'm not sure that--

MS. CASTNER: No. I'm saying that there is an obvious need, as stated through all the research that we've done, for specific airports to have tax relief. The Somerset one is a real example, because they paid an exorbitant amount. If we're trying to look at something that encompasses all the airports, the ones that currently pay and the ones that don't, the ones that are large, the ones that are small, the ones that pay a lot and the ones that don't, which I believe is what we're doing rather than scaling a tax idea, then I'm saying that exempting all of them I do not believe is the answer, because it will put great assistance to some who don't even care about the community's opinion that they are not paying any land taxes, and to others who don't feel that their land taxes have been that high currently because of their situation it will add a burden.

So I'm saying, let's find something in-between that does not have the immediate abrupt negativeness that this does to three or four of us. And I do think that that summary legal sheet that we had gotten back six months or so ago had some options on it. One of them is this second bullet relating to selling development rights. And I do think that that's a more palatable community approach to the tax issue.

DR. ABUCHOWSKI: Okay. I'm confused. I want to back up here. This isn't a scalable position.

MS. CASTNER: Correct.

DR. ABUCHOWSKI: This is an absolute position.

MS. CASTNER: Correct.

DR. ABUCHOWSKI: This makes all airports equal.

MS. CASTNER: Correct.

DR. ABUCHOWSKI: So it is not scalable. Okay. The situation with Somerset is that airports are not being treated equally by the tax law. We propose that it should be treated equally.

MS. NAGLE: Well, we don't know what their assessment is because it's very valuable land there at Bedminster.

DR. ABUCHOWSKI: Highest and best use, so it's not equal. It's scalable as a consequence.

MS. CASTNER: But it's also more valuable land. She's saying--

MS. NAGLE: Right.

DR. ABUCHOWSKI: But that's not the issue we are trying to say. It's a public use airport--

MS. CASTNER: No. But it is an issue.

MS. NAGLE: Because that's how the property tax is--

MS. CASTNER: Yes.

MS. NAGLE: --because I may pay more than someone else.

DR. ABUCHOWSKI: I understand that. We are trying to (indiscernible) that issue.

MR. McNAMARA: Could I--

DR. ABUCHOWSKI: We're saying--

MR. McNAMARA: I have--

DR. ABUCHOWSKI: I'm sorry.

MR. McNAMARA: This is the first time in my life-- I mean, Commission Castner is an airport owner. The proposal is to reduce the amount of taxes she would pay as an airport owner.

MS. CASTNER: No. It's to eliminate them.

MR. McNAMARA: Or to-- No. Not to eliminate them. To eliminate them on certain assets.

MS. CASTNER: Correct.

MR. McNAMARA: Commissioner Castner is opposed to that, and I still don't understand why. Because it's going to create bad relations--

MS. CASTNER: Because I live there. You don't live there.

MR. McNAMARA: --with your host community?

MS. CASTNER: I live there. I'm telling you that this will cause more turmoil than \$3000 or \$5000 is worth. I live there. I'm a neighbor. I'm a friend. I'm a supporter in the community.

MR. McNAMARA: You're also paying very, very low taxes if there is \$3000 or \$5000.

MS. CASTNER: And I'm-- No. I didn't say that. I'm saying what we want to do is come up with something that allows you to continue being a proud neighbor paying your way, because people will think that you don't pay your way and--

DR. ABUCHOWSKI: So why don't you provide a contribution to the community?

MS. NAGLE: I was going to say, you could do that.

MS. CASTNER: Are you kidding me? I bet I give \$20,000 a year.



DR. ABUCHOWSKI: Well then, that's the point. If you want to be a good neighbor and provide a contribution to the community, and you'll get brownie points that way.

MS. NAGLE: Right.

DR. ABUCHOWSKI: I think you've got to look at this in toto for the airport system as opposed to individual aspects on an individual basis.

MS. CASTNER: Who here thinks you can take this as it is and walk in front of group of an average cut of a community that has an airport in it and that they would vote for that?

MR. McNAMARA: Nobody.

DR. ABUCHOWSKI: Yes. That's not the point.

MR. McNAMARA: As I said when we got started, none of these things are the thoughts of anyone. These are just concepts that we are discussing. I believe the consensus, if I'm -- at this point, is that certain nonrevenue generating assets of airports should be tax exempt because these assets serve a public use and serve very little private use.

I was trying, because I'll be responsible for rewriting this-- I was trying to define what they were. And I was going to bring up runways, taxiways, ramp areas, terminal areas, hangers, fuel areas, and buildings in which flight schools, FBOs, maintenance shops, other things were located, feeling that somewhere in there the opinion of the Commission will change and they will feel that certain of these things are taxable and certain of them are not taxable.

One other asset that we have to bear in mind is land area -- undeveloped land area -- that must be maintained undeveloped for the purpose

of protecting instrument approaches and land area that is being reserved either for future runway development or clear area.

MS. CASTNER: I think I know why this hits me two ways, because the commerce component, that you brought up so nicely in this legal aspect of it-- I view Teterboro and Morristown and Solberg and Trenton as truly commerce kind of hub facilities. I view us as an airfield that has primarily its goal as a good flight school, a good FBO, a good maintenance shop, a really good place for a real pilot to come to and learn about aviation.

How much commerce actually occurs here? Well, when Allied -- whatever he's called -- when those guys take off, there's maybe three planes that I always have to be sure that the runway is clear for, because they're really conducting business and the flight school. Nobody else is conducting business. They're flying their RVS, their twins, their whatever -- oh, and maybe the skydive school in the summer, keeping it open for them. That's commerce, and that's the opinion for these two areas of litigation.

Now, do I think that they are like highways? Yes. Do I think we should be helping them plow them and do all that? Yes. Now, I look at our facility, and I say, okay, it's important that those guys get out. It's important that the architect gets out. It's important, you know. Can I change my flight school lesson? Now, here's where the community has its ability to step in to say, is that a small business that's absolutely necessary to commerce and can be argued under the law, or is that the shady gray area of supremacy grounds and all that?

DR. ABUCHOWSKI: I think you ought to be careful that you're arguing yourself into a position that your airport is unessential.

MS. CASTNER: It is unessential. Is recreation unessential?

MR. KETYER: May I make a comment?

DR. ABUCHOWSKI: No, it's essential. Flight training is essential to the future of the aviation industry.

MS. CASTNER: And there are people who feel that having your speedboat is not and having your--

DR. ABUCHOWSKI: No. Speedboats do not generate people essential to an industry.

MS. CASTNER: Or teaching somebody to drive a steamer.

DR. ABUCHOWSKI: Okay. But to me, I think that in an era in the future where we're looking at a potential pilot shortage, in the immediate future, the ability to train pilots is essential.

MS. CASTNER: But most of them are trained, let's face it, through--

DR. ABUCHOWSKI: It doesn't matter.

MS. CASTNER: --the service.

MR. McNAMARA: I must say that whether you consider your airport essential or not, the State--

MS. CASTNER: Commerce, essential to commerce.

MR. McNAMARA: To commerce. Okay, essential to commerce or not. The State may have a totally different view. And this Commission may have a totally different view--

MS. CASTNER: Am I right about the arguing part?

MR. McNAMARA: --of your airport. They have-- Have you received grant funds from the State?

MS. CASTNER: Yes.

MR. McNAMARA: Okay. The State has got a different view of your airport. They believe that you are essential. We, as a State, have-- We serve-- Each airport in our State serves 147,000, plus or minus 10,000, people. It's the second highest in the nation. And this State has to consider whether or not every single remaining airport is essential. If not in its immediate form, then as a reservation of land that will be there, hopefully, at some future time when it will be developed into a facility that would become more in the nature of one that you consider to be essential. I mean--

MS. CASTNER: Well, the open space component is essential no matter how you look at it, the preservation and the property and all that, without a doubt. As an airport, the fact that we don't want to have big jets and all that in there, because we want it to be a nice flying community, is where you could argue the other side of it. If a residential flying community that has a few jets, corporate twins, going out, 421s and things like that, is that-- This commerce argument essential?

MR. McNAMARA: Well, let-- This is--

MR. ROWAN: Can I raise a concept that I think is worth the Commission dwelling on as we go through these? Regardless of what Jack's survey uncovered, it's my belief, and I think, some of what you uncovered supports it, that airports go out of business because the first generation, the existing generation sees a chance for a lot of bucks and sells it. And two -- the second generation either can't pay the taxes or doesn't want to run an airport,

and they sell it to get the money. And therefore, I think, underlying this entire study that we've done is the fact that airports go out of business because people want the money or need the money or the value is greater as a developable land than it is an airport.

And therefore, if I were making this study, I would have the headlines to the Legislature that airports go out of business because of the value of the land. And therefore, the State should come along and set up a Green Acres type program, if it will, and an airport type program where they buy the development rights. With the purchase of the development rights goes most of the value, so that that established then a remaining value for tax purposes, but still a value for tax purposes. Just as the State today buys the development rights on farms. A farmer sells the development rights on the farm and still has the right to farm it.

So I think if in big headlines on No. 1 was that here is the reason, here's what you have to do and then all these other things would be somewhat supportive to that concept, we have a shot of getting it through. You give 15 suggestions to a bunch of legislators, and they'll argue about them the way we are for 10 days, and nothing will happen. So that's the way I would approach it if I were the sole Commissioner.

MR. McNAMARA: Let me just make one point, Mr. Rowan. The improvements that some airports will receive arbitrarily put on value on them of \$10 million. That is not an excessive number. It will be low in some cases and high in others. The taxes at a 2 percent rate on \$10 million would be \$200,000 a year. If airports receiving those improvements were told they'd receive them but they had to pay \$200,000 a year, they know their business

and they know that these businesses are not-- That's wrong. They would probably opt, or at least they'd have to seriously consider, not receiving the grant to make that improvement.

So, however, if we were to say we would exempt that improvement from taxation, from real estate taxation and maybe do it in the way that McCarter and English had recommended, that the State would pay back to the municipality some kind of a payment in lieu of taxes, then that would make the grant program much more viable. And the grant program, of course, is how we're going to improve the airports that we have.

I agree with you with respect to, perhaps, the land that has to be held for instrument approaches and the land that has to be held for future development of runways that the development rights on that land being sold reduces it to a value that is an airport value, and whatever that is. And that that land then can be taxed at that value.

MR. ROWAN: I don't think you're addressing my point. Maybe I missed it.

MR. McNAMARA: I'm sorry.

MR. ROWAN: My point is that airports are going to keep on disappearing as long as that land on which you can earn a relatively modest income is worth \$3 million to \$10 million. And therefore, if the State buys that land and gives the airport owner the \$3 million or \$10 million, just as they do farmers for their development rights on land, then we're going to keep all the airports in New Jersey because that's the sole purpose to which they can be put because of the program. And therefore, if we want to preserve airports,

we've got to pay the owners for the value as airports and insist they remain as airports for perpetuity.

MR. McNAMARA: Pay them market value for the difference-- Pay them whatever the difference is between market value at highest and best use and the actual value as an airport.

MR. ROWAN: They should come back almost as a farmland assessment, although you may not call it that.

MR. McNAMARA: Right.

MR. ROWAN: And that ought to be a great big bold type recommendation, and then these other things, let the legislators argue about those for two or three weeks.

DR. ABUCHOWSKI: Let me just give a devil's advocate opinion, not that I'm in disagreement with you, but let me just argue it from a different perspective. We have, let's say just to make calculations simple, 40 airports and assume that of those 40 airports they're worth \$10 million a piece. You're going to ask the State in bold letters to come up with \$400 million to buy up, literally, buy up the airport system of this State and become the airport owners. And overnight, the State--

MS. NAGLE: No.

DR. ABUCHOWSKI: Now wait a second. They just bought your land. You may be living on it, but they bought your land.

MS. NAGLE: No.

MS. CASTNER: No they didn't.

DR. ABUCHOWSKI: What did they give you the money for?

MS. CASTNER: The development rights.

MS. NAGLE: The deed restricted as an airport.

DR. ABUCHOWSKI: So they wouldn't give you the full value of the land?

MS. NAGLE: Right.

DR. ABUCHOWSKI: Okay.

MR. ROWAN: It would be a big number of dollars for the present owners to say, "Hey, good, I can keep my airport forever, and I can also have this block of money."

DR. ABUCHOWSKI: Well, I'll still go with that. Because besides the fact that we will spend five years arguing the value of the development rights -- because that's going to take forever to argue that and what's the appropriate number -- you're still going to ask the State to come up with a huge chunk of money. If not the \$400 million--

MR. ROWAN: They've done it for farm assessment--

DR. ABUCHOWSKI: I understand they've done it for a lot of things. I'm just saying that in the state of the State right now, it's very questionable that they're going to be open to doing hundreds of millions of dollars for this. On the other hand in the issue of privatization because we're all capitalists, wouldn't it be nice if airports were actually profitable and there was a reason to want to run an airport, because it was a moneymaking operation and private investors would actually invest -- here's a concept -- would actually invest in an airport because it makes money. Not because it's subsidized, but because it makes money. And I think what we want to do here, at least what I would like to do as a Commissioner, is look at an airport as a



moneymaking operation. It is a business like every other business. And if it can make money, it will stay in business.

MR. ROWAN: And if it can't, it won't.

DR. ABUCHOWSKI: I understand that.

MR. ROWAN: And if it raises its rates for it to make money, it drives out the aviators. They don't fly, because it's too expensive.

DR. ABUCHOWSKI: If the State buys 40 airports, they'll close down 20 of them.

MR. ROWAN: No, they buy the development rights only.

DR. ABUCHOWSKI: I understand that.

MR. McNAMARA: Let me make a point here, and we've got to move on so--

Commissioner Rowan, your point on the purchase of development rights is one that we are going to address subsequently if we have a number of points to address. I just conferred with Fred Telling, the embodiment of good sense on our Commission, and we're in agreement that this isn't going to be the meeting at which we're going to resolve these issues.

MR. ROWAN: Right.

MR. McNAMARA: So we're going to have to have another meeting for these purposes. What I would like to do at this meeting is get a consensus right now of the Commissioners on each one of these points. We can discuss them, but we can't discuss them at too great lengths.

Looking at bullet point No. 1, if it were to alleviate the real estate tax burden exempting all land-- Well, let's do it a little more specifically. Runways--

DR. TELLING: Mr. Chairman?

MR. McNAMARA: Yes.

DR. TELLING: Again, if I just try a slightly different tack to this. A test to the straw poll is a degree of Commission support basically for assuring fair and appropriate, consistent taxation of our public use airports. Because that strikes me as our goal, and we may have to come back and deal with mechanism. But, I mean, is there -- it's not a vote -- but is there a general nodding that's what we're trying to accomplish? (affirmative responses)

MR. ELLIOTT: There should be a level playing field. Somerset shouldn't pay a lot and maybe their neighbor pay a little.

DR. TELLING: And this is where I think, as a Commission, we'll come back as we refine these, because that's a more saleable position. And I think Commissioner Rowan's point, as you were indicating earlier, Mr. Chairman, is a very good one. And it struck me that many of these things ultimately probably can be bracketed under things which will preserve our public use aviation facilities. We have three or four things in that, things which can upgrade the safety in the facilities of existing airports that we have and other things that I think, looking to the State's interest, enhance the degree of appropriate State oversight in integration with our total transportation system, which a number of these things point to.

So there may be just a simple way to reorganize some of these. I would say that maybe the only other suggestion is maybe we ought to try and mail out to everybody that McCarter-English document and see whether or not that really does help us--

MR. McNAMARA: Okay.

DR. TELLING: --as much as it does in our memory.

MR. McNAMARA: Now, let me just see if I understand what we're saying here. This first point would be adjusted such that the tax burden on privately owned-public use airports would be equivalent to or comparable to the tax burden on public owned-public use airports. Is that the consensus of the Commission? All in favor? This is only-- This is not-- This is just a consensus taken. It is not a vote on this proposal. I have to have some direction though to rewrite.

Is that just what you said, Fred?

DR. TELLING: No. It differs slightly in the sense that that actually would then have us automatically moving to exempt, and I think therein is the bugaboo that lots of people have.

MS. CASTNER: We want a fair playing field.

DR. TELLING: Exactly. I mean, the language I think-- We're still going to have to come back to the hard piece of what the mechanism is. The language is one in which we are not going to sell the public on no taxation, but fair, appropriate means of taxation, consistent taxation, for public use facilities throughout the State. And I think that's the goal. Now, how do we do that, Mr. Chairman? Well, I think we're going to have a few weeks of noodling and see what our documents told us and come back to it.

MR. McNAMARA: Okay.

MR. ROWAN: Okay.

DR. TELLING: Essentially that's a vote to table consideration on this. I would like to--

MR. ROWAN: We're all in favor of some form of tax relief, so why don't we--

DR. TELLING: Yes. I think we should be pleased there's at least agreement on tax relief and the question-- We still have to work out the mechanism.

MR. McNAMARA: Okay.

Second item: Establish a State program enabling private airport owners to sell and transfer their development rights either to other private parties or to the State which must stand ready -- meaning the State must stand ready -- to purchase these development rights when exercised.

That's your point, Mr. Rowan.

MR. ROWAN: Except looking at other private parties because that could be anybody and--

MR. McNAMARA: But what difference does it make? It's certainly beneficial to the State if they don't have to buy the development rights.

MR. ROWAN: Yes, but some developer might buy it.

MR. McNAMARA: Yes.

MR. ROWAN: And then throw the airport off sometime later and--

MS. NAGLE: No, No. Their property would be more highly developed.

MR. McNAMARA: The development right concept is that I am an airport and I can develop. I can become a large residential community. But I will sell my right to become a large residential community to Mr. Contractor,

who has a piece of property on the other side of town, and on his property he can have 50 units, but I'll sell him a right to have another 50 units. The town ends up better off because they get less units. The State ends up better off because they preserve an airport, and I end up getting paid what my land is worth, the difference in the value of my land.

MR. ROWAN: You might add conservancies to that program, too.

MR. McNAMARA: The what?

DR. TELLING: Conservancies.

MR. ROWAN: The conservancies that are buying up land for open space. I think it considers an airport to be open space.

MR. McNAMARA: Okay.

MR. ROWAN: You mean development rights are sold and permanently sold that's one thing. If they change the laws on these building rights or housing rights, whatever they are, then that could get away from us.

Right now municipalities have so many going per acre and whatnot, and you can trade those and sell them back and forth, but later on the municipalities can change the requirements, and therefore, those development rights, bought by a private party, could become valuable.

DR. TELLING: They could be at risk.

MR. ROWAN: So it has to be somehow apparent airport forever, for perpetuity, as opposed to development rights. It has to remain as an airport is the concept. If the State bought them, they would say we're buying the development rights so that the airport remains in perpetuity.

MR. McNAMARA: So we want protection for the perpetual use.

DR. ABUCHOWSKI: I guess I'm in favor of it again, but I think there is going to be a qualification.

MR. ROWAN: It's a problem.

DR. ABUCHOWSKI: It's a problem because just as the State isn't buying up every farm, they aren't going to buy up every airport. What's going to end up happening is the State is going to create a list of the most important airports that they believe are essential to the infrastructure of this State, and those will be the airports that will be purchased. All of the other ones -- and it won't be 40 of them -- all the other ones will have to live on their own and make it either as a profitable business or they are going to go out of business.

MS. CASTNER: I think there are people who would turn this down--

MS. NAGLE: Right.

MS. CASTNER: --who would turn down the development rights.

MS. NAGLE: Right, they don't want to because--

MS. CASTNER: I just wanted to go back quick because I think this would really speed this part up is if you took Mr. Rowan's idea of this page--

MR. McNAMARA: Yes.

MS. CASTNER: --and the objective was two sentences or one sentence of the statement of what our charter was, and then you put the finding -- is what Jack and my report said about why they go out of business and then just put strategies.

They are not recommendations as much as they are-- What I don't like about this recommendation thing is when somebody gives me that

I say, "I could have said that, but how do you do it?" I would like somebody to bring me a piece of paper that doesn't say we all need to make more money is my recommendation. How do we make more money?

So having a strategy listed underneath that could encompass five or six of the things that we are saying here -- and they might not all be ones that we would all have thrust upon us. You know, maybe one of the strategies is one that Alexandria chooses to use and another is a strategy that Teterboro chooses to use.

MR. McNAMARA: In the report that was sent to everyone, there was a terminal chapter, entitled "Recommendations of the Commission." It goes on for seven pages and it sets forth some of the reasons. I don't encourage anyone, at this point, to read that section because as the rest of the document will, that will be changed too. But it is essentially the same section that everyone received, and the bullet points are only to help us as an outline for our discussion.

The business of having a recommendation and setting forth our reasons, I think, is important in the terminal chapter.

MS. CASTNER: What I'm saying is this is one page that all the other background information and everything that you're saying would completely support that on one page, without me flipping back and forth and doing that. You could hand this page to anybody and they would say okay the objective was the Commissioners were given this task to find out so-and-so. What was their basic finding that's critical to these strategies? The basic finding was that airports go out of business because of financial reasons that the property is more valuable.

MR. McNAMARA: So what you're saying is that this page should be organized in such a way that we set forth a recommendation and support that recommendation by stating our finding of fact.

MS. CASTNER: Well--

MR. McNAMARA: And then what, our conclusion of the law?

MS. CASTNER: The first thing up there I would call objective, and that's exactly what the Commission was given, a mission, an objective. I'm doing this from-- I just did my marketing thing.

The next one would be finding. What was our basic overall finding from all of this research? It really was that airports are disappearing because the money is greater for another use. All that other stuff is subsidiary, the people moving in, the sound, the noise. That's all because the money -- the next generation -- is of more value than flying across the Atlantic. Then the strategies-- I like the word strategy rather than recommendation because a strategy implies that you have a solution. It's not a recommendation that has a variety of solutions.

A strategy is a real course of action. The strategy is to reduce the tax so-and-so and here is some of the actions. The actions are that we are going to look at equalizing the playing field for tax space. We are going to look at moving the dollars from development rights to another piece of property.

MR. McNAMARA: This form of--

MS. CASTNER: It's a straight marketing plan.

MR. McNAMARA: This form of report was given to us by the group who are professionals in writing these kind of reports for the Legislature. I'm not opposed to hearing recommendations on the form of report at any



time, and I don't mind having a form of report that states, perhaps, if it's possible to do it on one page, the finding of fact and the recommendation.

MS. CASTNER: All of this is great. All of this stuff you have is great.

MR. McNAMARA: But I don't want to get through-- I would really prefer to avoid issues of form today and let's just address -- not for the purpose of resolving them but just -- for the purpose of getting a consensus, some of these substantial considerations.

Now, I would just like to bypass point two by asking the members of the Commission if there is a consensus that we should recommend to the Legislature a program for transferring development rights either privately or to the State but under certain circumstances where the arrangement will be perpetual.

MR. ROWAN: Absolutely.

DR. TELLING: I have no problem there.

MR. McNAMARA: Okay, we are all in favor of that.

MS. NAGLE: Wait. So if you want to transfer your development rights, then you have to maintain that the airport will stay an airport forever.

MR. McNAMARA: Yes.

MS. CASTNER: Because it can't be divided.

MS. NAGLE: No--

MS. CASTNER: But you can sell it as an airport.

MS. NAGLE: No other property owner has to do that if they want to transfer the development rights, do they?

Can't they keep it as a farm?

MR. JOST: You're receiving money for it, though.

MS. NAGLE: You can't develop it.

MR. McNAMARA: If your land is worth \$40 million as it is and \$1 million as an airport, the concept is you would be paying \$39 million now and you would have the right to sell the other million dollars worth anytime you wanted to. But it would have to be as an airport.

MS. CASTNER: That's right.

MS. NAGLE: Okay, I guess I would prefer to call it an airport preservation program, so it's similar to the farmland. That's what I would like to call it.

MS. CASTNER: That's a whole other thing.

MR. McNAMARA: Okay, that is a different thing.

Three: Expand the State's capital improvement funding for airports.

The State, I guess, has a Capital Improvement Funding Program that has ranked, through the years, in the bottom 20 percent of states, very close to the bottom 20 percent of states.

Just recently, with Governor Whitman and Jack Penn, as the Director of Division of Aeronautics, that jumped up to becoming closer to the modal class, but still running off the pace in terms of total amounts expended for capital improvements on airports, where I think we're still very close to the bottom in terms of dollars per capita in this State. On dollars per airport, I think we are running around 24th or so.

In dollars for private use airport we are running first, but that is an insignificant statistic because we have 48 public use airports for general

aviation -- this would exclude Newark and Atlantic City. We have 32 that are privately owned, and if the State spends anything on us, it is almost-- Since other states' public use airports are substantially publicly owned, if it spends anything on private use airports, it's going to go to the head of the line.

However, it has come up there is a concern, however, if we are going to recommend point No. 2, which we are -- at least we have a consensus today that we are -- that you would be looking at an amount of \$350 million -- this is my calculation -- to \$500 million over a period of time as you purchase development rights. This is not an unwieldy number, but it is equivalent to the budget of the Department of Transportation on an annual basis.

If they were going to allocate 10 percent to their airports, which I don't think they will, but -- other states, I mean -- there would be a \$50 million a year allocation. Florida has about a \$100 million a year allocation. Puerto Rico, Hawaii are in that realm with Florida, and there are other states that are spending enormous amounts on their airports. We can do that. We could recommend that. But with the poor nature of the infrastructure, the more or less inadequate condition of most of the general aviation airports, and with a program that we would recommend for purchase of development rights, I think we have to recommend that the State's capital commitment to this program would have to be increased.

Are there other comments on that?

DR. ABUCHOWSKI: I agree.

MR. McNAMARA: Is there a consensus on that? (affirmative response)

Okay, we're all in favor.

Amend Municipal Land Use law to create an airport zone providing that airports are conforming uses and to specify use is compatible with the airport zones such as car rentals, restaurant, motel/hotel, commercial offices, and light air freight.

Okay, now, this concept is a slight modification of the Air Safety Act in that this will specify an airport zone. The Air Safety Act simply said that an airport could not be a nonconforming use. But if the State is going to continue to have the benefit of privately owned airports, private individuals providing public transportation facilities, then the State has to make it an economically feasible proposition for them, and the only income that airports derive essentially is from fuel sales and rentals. In essence you can look at their flight schools and their maintenance departments and look at that as a rental situation. They can rent land to a flight school, they can rent to a maintenance department. If they don't have rental income sufficient to make their operation or their dedication of that land economically viable, then you are going lose the airports for economic reasons just as they are doing today.

MS. CASTNER: What's our current zone? It's called--

MR. McNAMARA: Airport--

MS. CASTNER: Is it the hazard--

MR. McNAMARA: Well, the act is called--

MS. CASTNER: --safety zone?

MR. McNAMARA: --the Airport Safety Zone Act.

MS. CASTNER: Okay, so the piece of property-- That little formation --

MS. NAGLE: It's on both sides of the runway.

MR. McNAMARA: The clear area or the safety zone?

MS. CASTNER: Past the clear area out where people argue that their property is of lesser value.

MR. McNAMARA: Right.

MS. CASTNER: Does this proposal change that?

MR. McNAMARA: That? No.

This proposal would, in fact, address some of their problems. I don't know how the Legislature would choose to write this, but if they chose to say that all the land on the airport and all of the land immediately adjunct to position to the airport is included in the airport zone, by law aviation uses are permitted within that zone and aviation uses include all things compatible with intermodal transportation including flight offices, airfreight terminals, motels/hotels. All those people that are complaining about some diminished value to their land would be ecstatic to having all of a sudden enormously increased value to their land.

MS. CASTNER: There are municipalities now that do have zoning called airport, and it does include these items here, because ours does.

MR. McNAMARA: Yes, and that's appropriate and that, by the way, is pretty much where our Supreme Court went in one of the Morristown-Hanover cases. This is a concept that is pretty much borrowed from the raising of that case.

The consensus on that is? (affirmative response)

Okay, amend all laws regulating land use and environmental Protection to provide that the New Jersey Department of Transportation shall administer these regulations respecting any land within the airport zone. This

is the problem that has been complained about so much in testimony by airport owners.

I have trees that the Department of Transportation tells me must be cut to clear the clear zone, and then the Department of Environmental Protection comes out and tells me I can't cut the trees, I have to move the runway. That's an actual case where Morristown was told exactly that. It's kind of the human being verses the white owl situation. In this particular case it's not the human being seeking life and sustenance. In the ordinary course it's the human being in peril.

That's pretty much the genesis of this recommendation. There was also, just generally, terrific confusion with respect to administration of the environmental laws affecting airports, and it would be much easier if the conflicts were reconciled in a bureaucracy such as the DOT, and then the final ruling would come as a single ruling to the airport owner.

MR. ROWAN: I think the way it's worded it sounds a bit ominous because it sounds like we are giving a governing agency jurisdiction over our private land at the moment. I think they ought to have final jurisdiction over other regulatory agents as opposed to jurisdiction over the airport owner itself, perhaps.

DR. TELLING: Right. I think that is a good suggestion, but I do think that we have ample testimony. Basically, what we are trying to address -- and this goes back to, I think, the proposal has been made -- if we talk about the finding, the finding here is we have multiple, occasionally conflicting, or in other cases, unclear regulatory jurisdiction. To your point is that's what we are trying to fix.

MR. ROWAN: Right.

DR. TELLING: The administration of the current regulatory jurisdictions of these other and centralize that clearing point in the DOT.

MR. ROWAN: Exactly.

DR. TELLING: So with that I think-- I would certainly strongly support it.

MR. McNAMARA: The concept is then to--

DR. TELLING: Is to provide for coordinating administration, perhaps--

MR. McNAMARA: Yes, through DOT.

DR. TELLING: --of all regulations surrounding so-and-so, with regard to airports in the Department of Transportation.

DR. ABUCHOWSKI: Just a point there, would that solve a problem or simply put the DOT in conflict with the EPA or whoever else is in there? If they are in conflict, it isn't going to help the airport because you have just moved the conflict somewhere else. I think the issue is that we need--

DR. TELLING: You need to add to--

DR. ABUCHOWSKI: --we need authority that it cuts through it immediately.

MR. McNAMARA: All in favor? (affirmative response)

Okay.

Authorize State maintenance of all public use airports by directing DOT to repair runways and taxiways, remove snow, and maintain grass areas within the airport facility. In his absence, Jack Elliott, in his comments was not in favor of this. Let me find his comments. I think rather than looking for

them I just would borrow an expression from Fred and say he didn't think this would pass the ha-ha test.

The concept of it was that airports -- general aviation airports -- are public transportation facilities. Public transportation facilities should be maintained by the public, and some of these items such as snow removal, from time to time, exceed the capacity of the airport owner to achieve. The DOT has had a program in place these past two years, I guess, where they do this. They come in with excessive snows and they do plow the runways and the taxiways.

Is that right, Suzie?

MS. NAGLE: That's correct.

MR. McNAMARA: So it isn't something that is brought up just for the amusement; however, I'll leave the individual Commissioners to make their comments.

DR. TELLING: If I could make a comment. Again, I think moving toward a rubric it will probably adopt, this could easily fall under this notion of what could be done either upgrade the safety and facilities are current, and if we restructure this to either extend current authorization and build it much more around when there is a safety hazard -- and snow in particular is a safety hazard. I'm not sure cutting the grass is ever going to pass the ha-ha test, but I think snow removal and other forms of disposal, I think you could probably build a case. I certainly think it's worth raising.

MR. McNAMARA: There is another point to be made, and that is we have taken, through me, judicial notice of some research on repair of runways and taxiways -- I'm sure I'm not the only one who knows this -- but



there is a very steep declining curve in the integrity of these structures. If you pass the fourth year without having done maintenance and if you do your ceiling coat in the proper year, you may pay  $X$  dollars, and if you do it two years later, you will pay five  $X$  or six  $X$  dollars.

So maintenance and having a program legislatively put in place to maintain these structures is only good business, and this might be said to apply to any runway or taxiway. But if it were to -- then the runways and taxiways that have been paid for by the State, or paid for with public funds in one form or another--

MS. CASTNER: My take on this is-- We are coming up on our fourth year for our runway that we did take 90 percent funds for the grant, and we have been discussing how we are going to make a couple of changes there. I would say that there is a real need, especially on the runway portion, then the taxiway portion, then the ramp coming up for fuel and that kind of thing, that the State did set some type of schedule.

Say you are working on Highway 78 right out by us or by you guys and the opportunity to schedule the maintenance for the airport coincided with working on the highway because they are in that area, or however you want to do it, that you did look at when you accepted funds that the continued maintenance of it -- I mean, you can easily put in for another grant to do maintenance or you can do it yourself. You can go out and fill the pothole yourself, but I think the plan for the actual runway maintenance, coordinating it with the DOT's highway system, would be a way to go and on a real schedule that they worked out with the airport manager. But I think all of the grass and anything that had to do with--

DR. TELLING: The nonaviation pieces of it.

MS. CASTNER: Not even-- I'd laugh that one out. We spend hours and hours mowing the grass. I think the actual runway--

MR. McNAMARA: You want to pay taxes and mow the grass, too?

MS. CASTNER: I know, aren't I awful.

MR. ROWAN: You do at home, Jack.

MS. CASTNER: Actually, the only time I get a break is when my butt is sitting on the mower.

MR. McNAMARA: I want to invite Commissioner Castner to come to Far Hills--

DR. TELLING: And mow your grass, anytime.

DR. ABUCHOWSKI: Mow my grass, too.

MS. CASTNER: I do windows.

MR. McNAMARA: Not just that, but you could become a friend of the Far Hills government and pay my taxes.

MS. CASTNER: I really do think that the runway portion of it -- because they did a couple of things on ours that we would not have done. I do think that a schedule of maintenance to keep that going, because, boy, that fourth year comes really fast, and all of a sudden there is a crack and paint is needed and all that stuff.

MR. McNAMARA: Let's discuss this for a minute. Should this recommendation be for every runway in the State, or should it be directed specifically at runways that have been improved with State grants?

MS. CASTNER: Every runway.

MR. McNAMARA: Every runway in the State.

MS. CASTNER: And a public ramp area. That would include public ramp area.

MR. ROWAN: In a public ramp area, you'll never get a crew.

MS. NAGLE: Public ramp area?

MR. McNAMARA: I think, if the State puts it in, they ought to be especially concerned to maintain it, because the situation will never change. That is, that the airport owner won't fix it, and then eventually the State comes in and sees an unsafe condition or a noneconomic condition, and then the State has to pay the exorbitant amount to fix it.

MS. CASTNER: This is easy to schedule because it's like scheduling your new engine in your plane. I mean, you do have to be saving money and figure out how you are going to that.

MR. McNAMARA: Just for people who haven't been involved in the process, the State considers runways, taxiways, ramp areas, all to be public use areas of an airport for which grant money is available. They also consider -- although I haven't seen it too much in privately owned airports in New Jersey, but across the country terminal areas are also considered to be public areas that do not inordinately to the self-aggrandizement of the proprietor. So all of those things would be considered ordinarily to be nonrevenue generating public use areas that are entitled to state funding in other states.

MS. CASTNER: The key is safety. You are helping with maintenance because of the safety issues.

MS. NAGLE: That's public use. It's like any other highway or road.

MS. CASTNER: But it's not just to keep it less money to-- If, in four years, for some reason, it didn't need whatever it was scheduled for, you wouldn't do it.

MS. NAGLE: Yeah.

MS. CASTNER: If it did need it, because of safety--

MS. NAGLE: He's saying to extend and authorize it as needed.

MR. McNAMARA: Okay, wait a minute. Let me just do one thing. Grass areas are out by censuses.

DR. TELLING: Mowing the grass is out.

MR. McNAMARA: Okay, mowing the grass is out.

MS. NAGLE: What if the runway is grass?

DR. TELLING: You're on your own.

DR. ABUCHOWSKI: Yeah.

MR. McNAMARA: Repairing runways and removal of snow are in.

DR. ABUCHOWSKI: I'm with only those airports that have received grants.

MR. McNAMARA: Okay.

MR. HINES: May I come in here a second? You keep thinking about privately owned-public use airports more so than public use airports. Are you suggesting now that the State should go in and plow Morristown, Teterboro, Newark, and all of those places too?

MS. CASTNER: Yes.

MR. HINES: Is that the point?

MS. NAGLE: Who does do that?

MR. HINES: I said in my comments to you, Jack, this ain't gonna fly, this ain't gonna happen.

MR. McNAMARA: Okay.

MR. HINES: That's my opinion.

MR. McNAMARA: Because?

MR. HINES: Because the only people that really benefit are the private owners here. The public use airports -- or publicly owned airports rather, they receive all kinds of monies from the tenants and everything else.

MR. McNAMARA: They also own, already, snow removal equipment, don't they?

MR. HINES: Well, that's beside the point, now. Should they sell off their equipment and let the State come in and do it?

MR. McNAMARA: No. That doesn't seem like it's logical to me.

MR. HINES: You got a barrel of snakes here, and to me this is something that somebody is going to read and say what the hell is this about.

MS. CASTNER: I think the maintenance issues are fair.

MR. HINES: Maintenance issue you get grants for. You get a contractor for it, just like everybody else does.

MS. CASTNER: Yes, but what they are saying is that if you got it you come back in and it's on a schedule to redo it. You can do it through the grant system. That's another strategy.

MR. HINES: You do it through the grant system then and contract for the repairs like any public-owned facility does. They go out and contract for repairs on runways and the resealing.

MS. CASTNER: Right. You ask for another grant if you want to do that, or you do it yourself.

MR. HINES: Yes, Federal grants.

MR. McNAMARA: Suppose you come to a point where the Commissioner of Transportation says, "We just don't have the money for that, we're not going to do it."

MR. HINES: It's your problem, you're in business. You're in business, you've to take some risks.

MR. ROWAN: There's another problem in having the State remove the snow that I think you airport owners would recognize. I think it was two years or three years ago we had the ice here, and we had the guy who does the lawn in the summertime, who likes to move snow in the wintertime, and he was supposed to keep the runways clear. Well, he'd get out there about four in the afternoon and scrape out the ice on the runway and it would freeze all night.

We finally had to take over doing it ourselves because we wanted to get that white stuff off in the morning so the sun would melt it off all day, and we were shut down for a week because we had a local contractor doing it as opposed to ourselves. So now we just get out there ourselves and scrape the white stuff off so that the sun can get at the blacktop.

It's the only way you can keep a runway clear in an icy year. I don't know if you would agree with that.

DR. TELLING: I think you've got -- in listening to this discussion -- this is clearly going to a bit of a flash point. There a couple of things I hear being mixed up. There is a legitimate argument that I think can be made on

the grounds of safety for either reinforcing or clarifying the State's authority to come in and do what they are already doing, obviously -- and it sounds like an ad hoc basis -- helping out airports, keeping them open whether it's snow removal or other things. I think clarifying that authority on the basis of safety is a desirable notion to put forward.

I think there is a second issue I hear here, which is if you want to extend it to the issue of maintenance, there is a financial benefit clearly for doing it. Because if you do, as Chairman indicated earlier, maintenance and appropriate scheduling, in the long run, you're saving the taxpayer money because the deferred maintenance will just show up in a higher grant request sometime down the road.

But I think to a certain extent, these are separable, and I would suggest almost -- subject to everybody else's opinion -- we begin to separate them.

MR. McNAMARA: Okay.

DR. TELLING: One, I think is a reasonably easy and clean one, it builds on existing. The other one we probably better refine. I still think there is a good case both in financial grounds, and I would argue that it ought to probably be restricted to publicly funded because that's the financial argument. They were once funded, they are going to be back for funding again. But if you want to make it all, then you've got to come in, basically, as a safety issue, and then it could be on ad hoc authority. In other words, authorize the State to provide it. I think one of the questions ought to get raised is, does the State bill you back at cost, which would still be a hell of a

deal. Then I think you've got a potential proposal here that would pass some of the political stuff.

MR. HINES: Fred, are you suggesting public-owned airports, too? Are you including public-owned airports in that?

DR. TELLING: No, well, I think not. I think you raised a very good point. Publicly owned airports would have to be left out. I think it's privately owned airports in this instance.

Look, I'm making this up on the fly.

MR. HINES: So am I.

DR. TELLING: I'm trying to come up with a package.

MS. CASTNER: Well, it might be a balancing, I think, for you not paying any taxes.

DR. TELLING: Yes, depending on where we end up on that.

MR. ROWAN: I have to run, but I am generally in favor of all of these. (laughter)

DR. TELLING: Okay, we'll draft it.

MR. JOST: That was a great statement in one way or another.

MS. CASTNER: You know what the bottom line here is really for all of this is that aviation has to be a business that can make money.

DR. TELLING: Yes.

MS. CASTNER: And if you can just assist people in making the playing field level, then the people who are capable of surviving will survive and the people that aren't won't.

I mean, I kind of thought all along that if the State hadn't gone and helped the people who really were doing a bad job of managing airports to



keep it going, maybe the other people would have done okay that were struggling along and making a business out of it--

MR. HINES: Linda--

MS. CASTNER: -- because the survival would have been of the fittest.

MR. HINES: Why should the legislators care whether or not you make money?

MS. CASTNER: That's exactly right.

MR. HINES: Why should we care?

What is the point we're trying to accomplish here? I think the major point here is we are trying to convince the legislators that airports are essential to economy of this State--

DR. TELLING: Right.

MR. HINES: --and what can we do to help this economy or this contribution grow. I'm not so sure that we are doing that right now.

DR. TELLING: Any airport lost--

MR. HINES: It's not in the executive summary.

DR. TELLING: --will never come back again.

MR. HINES: No.

DR. TELLING: I know and I think that has to be clearly beefed up.

MS. CASTNER: Well, I like the idea that page one-- I really thought what Hank said there made a lot of sense.

DR. TELLING: Right, I think it does and I think there is a way -- and I have made four categories: Things which would preserve facilities; things

which are surrounding upgrading the safety in the current facilities; things which sort of enhance State oversight integration with transportation; and then a point that we haven't had a chance to talk about, what I'm calling private actions.

A lot of the things that I have heard in the testimony surrounded the issue of things which don't require legislation, don't require tax money, but would be good practices to do and to incorporate. Some of them are here, the example of these airport committee programs and communications. But I think this report overall would be aided -- I don't mean to throw a new idea on the table, but I think it would be aided by not having everything here be something that looks like we're a supplicant to the State.

DR. ABUCHOWSKI: I think many of those issues should be incorporated in the executive summary rather than create another page.

MR. JOST: I agree.

DR. TELLING: On this one, do we have consensus to the idea, assuming that the Chairman and I and whoever else wants to volunteer to help -- and split this up into a couple and then get it debated in that forum when we come back next time.

DR. ABUCHOWSKI: That's fine.

DR. TELLING: We're going to split this essentially into two concepts.

MR. HINES: This being which one?

DR. TELLING: This being No. 6, authorize State maintenance of public use airports.

MR. McNAMARA: Yes, I agree with that.

Establish airport committee programs to promote -- everybody did agree with that, right?

MR. JOST: Jack, one small change. I would like to see "establish local airport committees and programs" so that we definitely get a committee that is compromised of some of the governing body and the airport-related vehicle.

MR. McNAMARA: Yes, and you mean just to put that word in? That is certainly the concept of this.

MR. JOST: Yes, establish local airport committees and programs. That would give us a committee in each airport.

MR. McNAMARA: Yes. I think that this is probably beyond discussion. All of the testimony that we heard that was either from the municipality or from the airport owner indicated that the relationship is dysfunctional, there is a total breakdown of communication, and that in situations where communication had been maintained -- good communication -- such as in Alexandria, Teterboro, South Jersey Regional Airport, there was a very good relationship between the airport and the municipality, and those airports were progressing, they are going forward, they were able to do the development that they wanted, and they were liked by their townships. In all other cases where there was not good communication there was enormous enmity.

So, unless there is another comment on this, I just like to ask if we are in agreement.

DR. ABUCHOWSKI: For seven?

MR. McNAMARA: On the--

DR. ABUCHOWSKI: Establish airport community program?

MR. McNAMARA: Yes.

DR. ABUCHOWSKI: Yes.

MR. McNAMARA: Okay, so--

Provide incentives for economic development of airports in supporting geographic areas in an economically reasonable manner which encourages its economic vitality through the introduction of support of businesses.

I'm not sure what that means. (laughter)

DR. ABUCHOWSKI: I find it so vague as to be--

MR. McNAMARA: I'll strike it because it's probably mine.

DR. TELLING: It's also somewhat duplicitive of what I think you are trying to accomplish up above with your land use airports.

MR. McNAMARA: Yes, I agree.

DR. TELLING: It may be broader in scope, which I think is desirable, but then we ought to come back and address it in that form.

MR. McNAMARA: Promote the utilization of general aviation facilities in location decisions for fire, police stations, and similar emergency assistance services within the community.

We received testimony that this was a logical thing to do. That if there were an emergency on an airfield, it's handy to have the equipment right there, and because there is a lot of open land associated with an airport facility that this was not a bad place to locate fire and police facilities.

The suggestion is not to legislate this but to simply promote it or consider it.

DR. ABUCHOWSKI: Right. I think we are under the understanding they are probably -- and this is possibly one of them that is sort of private actions, or things which do not necessarily require legislative authority.

MR. McNAMARA: Right.

DR. ABUCHOWSKI: Tuck it there, because the obvious downside, though, if airports are where you would like, which is generally away from the community, it's not exactly the best place to put your police chief. They probably want to be more centrally located. So it's certainly not something we want to mandate, but I think we want to encourage it where it's appropriate.

MR. McNAMARA: Right, this is-- We don't have an authority to make recommendations to airport owners or even to municipalities, but only to the Legislature and the Governor. But we can tuck it in here and let the Legislature and the Governor worry about how that should be encouraged.

Is everybody in favor of that?

MR. JOST: Okay.

MR. HINES: Why don't you say "encourage" then?

MR. McNAMARA: Say again.

MR. HINES: Why don't you say "encourage"?

DR. ABUCHOWSKI: Encourage, not promote.

MR. HINES: Encourage the utilization of the general aviation.

MR. McNAMARA: Okay. Encourage is a good word.

DR. TELLING: We do, Mr. Chairman, under the article eight ultimately recommend what measures may be adopted to facilitate the

preservation or improvement of the system for general aviation airport. It was written broadly enough that we can always tuck some of these things which aren't legislative under that, I think.

MR. McNAMARA: Okay. As a condition of receiving State aid, provide that the State has the right of first refusal in the event an airport seeks to change its use.

DR. ABUCHOWSKI: Isn't that part of No. 2?

MR. HINES: No.

MR. McNAMARA: No, No, No. This is if Mr. Walker receives a seal coat-- Let's do Mr. Ed Brown who has never -- Mr. Ed Brown who has spent millions of dollars on his airport even to the point of having a private ILS into Allaire. If he were to have a seal coat put on the macadam in his ramp area, that as a condition of receiving that he would have to agree to give the State a right of first refusal at the time that he went to sell his airport.

Frankly, I don't see anything wrong with it.

DR. ABUCHOWSKI: I don't see anything wrong with it. I'm just wondering whether it's already part of something else.

I agree with you.

MS. NAGLE: Is it just during the life of the grant, or is it in perpetuity then?

MR. McNAMARA: I would say it should be in perpetuity. The purpose henceforth is going to be to perpetuate airports. Whatever program the State adopts in response to our recommendations, I think, is going to be one based on perpetuating airports. That's the problem they have.

MS. NAGLE: I have a big problem with this one.

MR. McNAMARA: Well now, Suzie, let me make this point. You have the option, you have the right to sell your airport for \$50 million. Somebody comes and says, "We'll give you \$50 million for your airport." You say to them, "I accept that offer, but first of all I have to ask the State if they want to buy it for \$50 million." You go down to the State and they say, "Yes, we'll take it." Why do you care?

MS. NAGLE: Because maybe who I want to sell it to is someone else. Maybe there is another reason to sell it to somebody else.

MR. McNAMARA: Other than money.

MS. NAGLE: Right.

MR. McNAMARA: Other than a financial reason.

DR. ABUCHOWSKI: You're asking for too much protection and at the same time you want the State to--

MS. NAGLE: No, No. I think you have an obligation to pay the State back. If they give you \$50,000 to do a repair to your runway and the life expectancy of that repair is 10 years, if in 2 years you sell your property, will you give 80 percent of the money back? That's what they have given.

DR. ABUCHOWSKI: Yeah, but I agree with the Chairman, who says the purpose that we are dealing with is not necessarily to protect your rights to sell the property to whomever you want to sell it to, but to ensure that you are not economically damaged by the sale and at the same time preserve airports. That's the issue we are trying to decide here.

MR. HINES: You can't deny her the right to sell the airport.

DR. ABUCHOWSKI: You can't deny her the right to sell the airport.

MR. HINES: She has a constitutional right to sell the airport wherever she wants.

MR. McNAMARA: Exactly. We're not saying that she doesn't. All we're saying is that if she is going to, that she's got to-- The BFP, the bona fide third-party purchase, comes and says, "I'll give you \$50 million for your airport." She can say I accept, but I have to ask the State first if it wants it, too.

MR. HINES: Well, she has other valuable considerations to include in that \$50 million pricing.

MR. McNAMARA: Well then, it's \$51 million.

MR. HINES: Then it's whatever it is.

MR. McNAMARA: Whatever the additional consideration is the State has to meet.

MR. HINES: But what you're trying to say is -- and she is objecting to, Susan is objecting to -- is, as long as she has an obligation to the State for a certain amount of funding, she will meet that obligation, but beyond that leave me alone.

MS. NAGLE: Right.

MR. McNAMARA: Okay, now that's a different issue and that's where -- and essentially that's the right of being free and pursuing happiness as opposed to the need of the State to preserve airports.

Now, if you are going to get something like a virtually free -- a 95 percent free -- runway given to your business, you're going to have to give something. Right now you're giving 10 years, and what this would do, as a Commission, is recommend that you give the 10 years and you also give a



perpetual right of first refusal if you ever intend to change the use or sell the land.

MS. NAGLE: What is that worth, though, a perpetual right of first refusal if we were to say to K. Hovnanian, "I'll give you a perpetual right of first refusal, all you have to do is pay this taxiway"? You don't think they would do that?

MS. CASTNER: I think they would do anything we want.

DR. ABUCHOWSKI: Yeah they would do that, but that's why the State is doing it as well.

MS. NAGLE: No, it seems like it's a very cheap deal for the State.

DR. TELLING: I--

MR. McNAMARA: Cheap in what way, I don't follow cheap. They are paying-- I mean, if you do a \$20 million improvement--

MS. NAGLE: Well, it may not be a \$20 million improvement.

MR. McNAMARA: They do a--

MS. NAGLE: It could be a \$5000 repair.

MR. McNAMARA: If they put in \$19 million, what they are saying is that we got this problem. The program we have -- we got a 10-year commitment for making these improvements -- isn't solving our loss of airport problem. All this is, really, is a tickler to give DOT an opportunity to allocate some of its funds to purchase airports or at least go to the Legislature and ask for funds to purchase these airports at the moment when the use might change.

DR. TELLING: Mr. Chairman, my objection -- and I wouldn't support it in its current form, at least, because its notion as a condition of receiving State aid is too broad. Without some structure and specification on

it, I think it would tend to do two things. One, in its current form, it would lead some owners to decline aid that they ought to, and should appropriately, take. So that would negate the objective that we have.

Separately, on personal grounds, I just don't think it's good policy. Long run I don't like to abridge private rights of sale, and it doesn't mean that someone can't voluntarily give it up, but as a Commissioner, I wouldn't be inclined to vote for it. I certainly couldn't without clarifying what we mean by the scope and extent of State aid that we would be talking about. This sweeps in everything. It's too broad.

DR. ABUCHOWSKI: I have an addition to that. I agree with the issue that there is a finite amount. Clearly, there has got to be an amount over which--

DR. TELLING: Some threshold.

DR. ABUCHOWSKI: -- some threshold amount because you can't do a \$50,000 driveway seal and then you behold to the State, I agree with that.

The other issue I'm going to want to go back to is eminent domain. If the State decides it needs an airport, if the State decides that Solberg is an important airport, can't the State walk in and say, "We're taking this"?

MR. McNAMARA: This afternoon, if they want to.

DR. ABUCHOWSKI: The airport has that right.

DR. TELLING: The State has that right.

DR. ABUCHOWSKI: The State has that right, now.

MS. CASTNER: So does Reddington Township.

DR. ABUCHOWSKI: So I'm not sure where I'm going with that other than a mechanism exists for the State to take over an airport. They may not need a right of first refusal, if at that point in time, they perceive it's going to be sold, it's important, and they are going to take it under any circumstances.

MR. McNAMARA: The difference would be that the State will probably never condemn Solberg Airport. That's an act of commission -- or actually -- and they won't make that mistake.

DR. ABUCHOWSKI: Do they have to condemn it to keep it an airport.

MR. McNAMARA: That's what the term is for some strange reason, that when they go in and take land it's called condemnation.

DR. ABUCHOWSKI: And I recognize that.

MR. McNAMARA: But if they have to take action to avoid losing an airport-- If they are told, "We're going to sell the airport, we're going to change the use," and you have a right of first refusal, now they have to make an action to decide that they are not going to do that. There is the difference between condemnation and this right of first refusal.

DR. ABUCHOWSKI: Okay. I think I'm in agreement that there has to be some kind of a threshold. I also agree that the State is not going to throw \$20 million into something and then 10 years later have it gone.

MS. CASTNER: Well, when we asked Jack about this last grant thing, because we had to be talked into taking this money-- It's never been litigated. Nobody has ever taken money, because the program hasn't been going that long, and then not kept it an airport.

So the first chance to litigate to see what might happen hasn't been put to the test, and basically what he is saying is he thinks that the test would pretty much fail in its overall attempt to save the airport.

DR. ABUCHOWSKI: Right.

MS. CASTNER: But if through a land sale you payed back the money that you owed, it would have to be kind of a done thing. So they are telling you that you really-- Ten years is what they would like you to commit to, but beyond ten years, they realize it's not really an area they can get into, or maybe they don't want to get into.

DR. ABUCHOWSKI: So are you saying that from an airport owner's perspective you would be willing--

MS. CASTNER: You commit to 10 years.

DR. ABUCHOWSKI: --to commit to the 10 years, that the State could have--

MS. CASTNER: After 10 years it's payed off. Now, within that 10-year time -- what we understand is exactly what Susan said, that if you had the runway for two years and here is how much it was prorated for, the 2 years that you payed back, the remaining amount it's still yours. But that has never been litigated.

DR. ABUCHOWSKI: So--

MS. CASTNER: Perpetuity is the word that disturbs everyone.

DR. ABUCHOWSKI: Yes, I understand that. Maybe the threshold amounts and times have to be adjusted.

MS. CASTNER: I'll tell you, I'm going to actually take this home. I have somebody coming in to work with me tomorrow and I'm going to work

on this. I'll tell you why this hits me as like we are really getting someplace, but it's not coming together in a nice picture. It's because I think all of these bullets fall into some kind of category, and we were sitting here saying-- You know, I think these fall into separate venues.

MR. McNAMARA: I agree.

MS. CASTNER: They might fall into public assistance strategy, private owner strategies, and maybe something that's a miscellaneous. But it probably comes into three kinds of strategies that you would say: Here's what we were supposed to do, find a way to keep airports alive. Here is what we found out, they die basically because of greater use. What can the public input be, and that might be the State government money thing, and that would be the strategy. What can we do?

I'm on both sides of this fence. I want my business to stand on its own, and if doesn't stand on its own, then I'm a poor businessperson or wrong business to be in and do something else.

I don't want my hand out to ask you for money when somebody next door to me might need it just as well. So I'm very republican in that whole component. But the fair playing field is what I think that everybody needs in order to -- that's my democratic side -- in order to get you up and running. Somebody paying too much tax verses somebody who happened to start out as a farm already, had that leg up is completely different.

So I do think that there are problems that the strategies here -- this is so bullet point, so specific that it sets a person back, and you can't see the big picture of how all the airports -- big, privately owned, publicly owned, not paying tax, paying tax -- how they might help themselves.

MR. McNAMARA: I think, you know, I agree with you, and I try to make clear when we got started that this is only to stimulate discussion.

MS. CASTNER: Well, what would all of you now give for those categories? I think this is one of the best discussions I have at -- in this group.

DR. ABUCHOWSKI: I would say legislative strategies is one.

MS. NAGLE: Well, this whole thing is legislative strategies.

MS. CASTNER: But there is legislative issues that deal with the private--

MS. NAGLE: Right, okay.

MS. CASTNER: What do you and I have to do that we should do for ourselves?

MR. McNAMARA: I think the whole thing is essentially recommendations to the Legislature. What the Legislature is going to do is-- Some of it is that the Legislature is going to change laws, like the municipal land use law or the tax law. Some of it is that the Legislature is going to change programs at DOT.

MS. CASTNER: All right, so programs--

MR. McNAMARA: Right.

DR. ABUCHOWSKI: Programs.

MR. McNAMARA: DOT programs. Some of it is that the Legislature is going to promote individual actions at the part of municipalities that host airports and on the part of airport owners or proprietors, especially private airport proprietors.

MS. CASTNER: All right I'm still-- Give me more. If the overall-- I came up initially with, and I can't read anymore -- like tax relief--

MR. McNAMARA: Let's get to the bottom of the list which is just a short way away, and then let's make up--

MS. NAGLE: Mr. Chairman, I just wanted to say one thing. I made a statement about the right of condemnation. Reddington Township thinks they have the right of condemnation, but we do not believe they have that right. I just wanted to say that for the record.

MR. McNAMARA: Okay.

MS. NAGLE: They tried to exercise that.

MR. McNAMARA: Let's do a consensus. Fred had to leave, but Fred, we will say, is not in favor of the right of first refusal. I'm in favor of it.

DR. ABUCHOWSKI: I am not.

MS. NAGLE: I am not.

MR. McNAMARA: Suzie is not.

DR. ABUCHOWSKI: I thought he was in favor of it with a threshold, that's what I understood.

MR. McNAMARA: Pete is not. Wesley, you are, that's two.

MS. CASTNER: I'm not in favor.

DR. ABUCHOWSKI: I'm in favor of it with a threshold and, I guess, a limit.

MR. JOST: With a threshold it's the same.

MR. McNAMARA: Okay.

MR. JOST: In other words, for a \$500 grant you would not turn over. Although, first refusal isn't going to take any money from you in the long run, I would say it would have to be 50, 100, or 200, a fair amount for the State to expect something for the money they are giving away.

MR. McNAMARA: The first refusal issue is pretty much the board is divided on at almost evenly.

Revise the State development and redevelopment plan to include the State's general aviation system.

All in favor? (affirmative responses)

The State needs to incorporate its general aviation system into any economic development plan in materials when promoting New Jersey for corporate relocations.

All in favor? (affirmative responses)

Develop a program providing the proper mix of publicly and privately owned general aviation facilities in the State.

DR. ABUCHOWSKI: That's the next commission.

MR. McNAMARA: What's that?

DR. ABUCHOWSKI: That's the next commission.

MR. McNAMARA: I think that's just something to be struck. I think that all of these things talk about a proper mix of public capital and private capital for the purpose of providing air transportation facilities.

MR. JOST: That sentence could be incorporated in almost any one of the others.

DR. ABUCHOWSKI: I agree.

MR. McNAMARA: Develop a plan as part of the State transportation plan wherein an airport is located in each county, where feasible, with a 7000-foot main runway and a 4000-foot crosswind runway. Incorporate in this plan facilities for an intermodal transportation system



suitable for the year 2050. Each such airport should accommodate a mass transit interchange and a car pooling facility.

The key words here, because I have encountered resistance on this, are develop a plan. I don't know how the rest of you feel about it, but I am of the opinion that the State airport system is dysfunctional. If you refer to Appendix A of our materials, you will see that I have put in there some tables that indicate the needs of the general aviation fleet, which I fly some of these aircrafts, and I know about them and others I don't and I am just getting the information on them. So the complete data is in there only for the Learjets and the Citation fleet.

But, if you look at Appendix A you will see the Citation fleet. It has in it the Citationjet, the Bravo, the Ultra, the Excel, the Citation VII, and the Citation X. The runway distances needed -- now, I'm going to propose for discussion that that mix of those six aircrafts is a good cross section of the mix of the entire corporate jet fleet. The needs of those aircrafts are going to overlay the needs of the corporate jet fleet when it comes to runway weight-bearing capacity and length.

That, if you look at the landing distances for ISA and ISA plus 20, you will see that they range from about 3100 feet to 5700 feet on a standard day. New Jersey has a special advantage because we are at sea level unlike other states. On a hot summer day, we are more compatible with jet aircrafts than other states are.

On a hot day, those distances go to 4500 feet to virtually 6800 feet. Now, in New Jersey there are -- if you go to the other table in Appendix A, you'll see the runway data for public use airports. Any airport indicated

there, this I received from the Department of Transportation, as asphalt has a weight-bearing capacity of 12,500 pounds or less. If you overlay the cross section of the fleet that we selected with the data on these airports, you will see that the fleet can go into only four airports in the State of New Jersey on a hot day, and you would think that another four would be added if the temperature went down to standard, but it wouldn't because one of them doesn't have the weight-bearing capacity.

So the corporate jet fleet can operate in and out of only seven airports in the State of New Jersey of which two are Newark and Atlantic City. Newark doesn't want any more general aviation traffic. It's trying to get rid of the 4.5 percent to 5 percent it already has.

We are talking about economic impact of general aviation and the growing nature of that and the benefit of that to our State, and we are suggesting strongly in our report, as the economic impact study indicated, that wherever you have a general aviation airport you have a facility that is driving economic activity, and the more economic activity you can encourage there -- I guess we don't have to suggest it to the State -- it's good for the State, it's jobs, and it's high-paying jobs normally.

But we don't have a system of airports that is going to encourage that in a lot of locations. I think that the State has got to look to what other states are doing, specifically to North Carolina, to Ohio, Wisconsin, Pennsylvania. They are all now developing runways that will accommodate this fast-growing corporate fleet, which is outstripping in growth the scheduled airline fleet every year. We have to do something to be competitive with those states, and I think that's what this is about. We have to start thinking, we

have to develop a plan. The plan shouldn't be just for airports, it should be for intermodal transportation in accordance with the testimony that we received at one of our first conferences from -- I believe it was Ms. Woods.

Do you remember, Suzie? The lady that came from the Intermodal Transportation Committee of DOT. (negative response)

In any event, that is my thought and that is a bullet point that I included and I would be helped considerably by your thoughts on it.

MR. HINES: Jack, the trouble I have is what the county did. I think the establishment of these airports and strategic locations throughout the State--

MR. McNAMARA: Okay.

MR. HINES: --to accommodate the economic activity existing there and the potential economic activity of those areas -- if we could direct it that way, I think it would make a little more sense, as far as I am concerned. I don't know about anyone else. But by county I think is going to scare everyone off.

DR. ABUCHOWSKI: I agree that such a plan is essential, and I also agree that airports will have to be placed according to some kind of a plan, not necessarily by county, either by geographic area--

MR. HINES: Appropriate geographic area.

DR. ABUCHOWSKI: --by proximity to larger cities, proximity to where growth should be by the year 2050. But the concept of developing a plan, I think, is essential for the future of the State. I think that such a plan will actually provide the fodder for No. 2, which is where the State is going to

have to invest its money and buy the appropriate land and the rights to those airports and establish these types of airports.

As I said before, I don't think it will be 40, I think it will probably get narrowed down ultimately to something around 20 and service the entire State. Probably those 20 of these types of airports will better service the State than 40 small airports.

MR. McNAMARA: In the way of driving major corporate economic activity, the small airport we must always recognize that there are, I think, 22 airports or 23 airports in the State that don't have a paved 3000-foot runway. That is pretty much the minimum length that any one of these aircrafts or any turbo prop aircraft will be using. I'm not even sure that their insurance rates will allow them to be economically based at an airport with that short of runway.

Anyway, of the 48, call it, 23 are shorter than 3000 feet. That leaves us with 25 that are 3000 feet or longer paved. Those that are 3000 feet to whatever or better already are taking some portion of the corporate fleet and they do drive economic activity. Even an airport that doesn't see itself as rendering a lot of service to that kind of purpose is driving economic activity just through its flight school and maintenance shops and other things that it does.

MR. HINES: They are central to the community.

MR. McNAMARA: Yes. So I'm not of the opinion that any airport should be lost. I am of the opinion that the State's airport system has got to be overhauled and a plan for that has got to be developed.

As a matter of fact, not just the airport system, but we are looking at doubling the State's population in the next 25 years. So instead of being 7 million to 8 million, we are going to be 14 million to 16 million people and our density problems are going to exacerbate fast, and we have got to be thinking in ways of mass transportation and rapid transportation and air transportation that all interlink.

That's my comment on it. Are there any other comments on it?  
(negative responses)

Okay, a consensus?

MR. HINES: With a revision on it.

MR. McNAMARA: For what?

MR. HINES: Revise it a little bit.

MR. McNAMARA: Subject to changing "each county" to "strategic locations."

All in favor?

MS. NAGLE: Should we say a number?

MR. McNAMARA: What's that?

MS. NAGLE: Should we say a number or just leave that alone?

MR. McNAMARA: I think just leave it open, it's a plan. They can say the number.

The last one is: Expand the zone of notification for potential purchasers of real estate set forth in Airport Safety Act to a radius of five miles from geographical center of the airport.

DR. ABUCHOWSKI: What is it now?

MR. McNAMARA: Steve, do you remember the distance?

MR. KETYER: I don't have it on me. It's within-- It would be anything falling within a safety or clear zone, so I don't know. The regulation is 16:62 of Chapter 62 of the New Jersey Administrative Code, and it classifies it as anything located within a safety zone or a clear zone.

MS. CASTNER: Why don't we make it like what we have at Alexandria, which is not a distance in the airport, but if there is an airport in the municipality you're buying a home in, you have to be notified that there is an airport there.

MR. McNAMARA: It doesn't work for the airports like Manville or Central Jersey, which are on the border of Manville

MS. CASTNER: So, okay--

MR. KETYER: Typically, also, you will find that the notification in municipal zoning procedures is usually from a certain radius from the four corners of the property.

MS. CASTNER: This is at the closing. It has to be brought up actually at the closing. It's part of your deed thing that there is a right to fly and a right to farm in Alexandria Township. So you can't buy a house or transfer a house in Alexandria Township that you haven't been notified that you can have a farmer next to you or an airport.

MR. KETYER: Certainly a clear zone or a safety zone will show up on any title search, as well.

MR. McNAMARA: I think right now that distance is one mile.

MR. JOST: I think five miles is reasonable, though. Because in our case, in Allaire Airport, you have got Neptune, Farmingdale, and several

other towns that wouldn't fall under Wall Township's jurisdiction to notify the owners, but the people should certainly know about it.

MS. NAGLE: Mr. Chairman.

MR. McNAMARA: Yes.

MS. NAGLE: I see this as a double-edged sword. I know you are trying to protect the airports, but there are people that live five miles away from even Morristown maybe, they don't feel that they are affected by Morristown, and now all of a sudden they are going to have something on their deed when they go to sell their property, and they are going to say, "Is my property less valuable now than it was before?"

DR. ABUCHOWSKI: I think the answer-- That's a point, but I'll go the other way, which is if we are really going to expand from 7 million to 14 million people, I hardly think that's going to matter because people are going to be moving into this State and wanting to live in this State and be five miles from an airport knowing that being five miles away from an airport is not going to affect your property value.

MR. HINES: I think five miles is a bit, though.

DR. ABUCHOWSKI: Maybe five is too much, three is appropriate.

MR. McNAMARA: Pete is an expert in this field.

MR. HINES: Five miles is too far out.

MR. McNAMARA: How far do you think, Pete?

MR. HINES: No more than three max. I'd say more like two to three miles max.

DR. ABUCHOWSKI: Okay.

MS. NAGLE: So how is this going to be carried out? This will be a restriction on their deed?

MR. HINES: Notification to the property owner buying a house within that area.

MS. NAGLE: How would you carry that out?

MR. McNAMARA: Leave it up to the Legislature to figure it out. Whatever it is, it's already a mile, all they have to do is change the number.

MR. HINES: Yes.

MS. NAGLE: I thought it was just in the safety zone. Only if you are in the safety zone.

MS. CASTNER: That's what I thought, too.

MR. McNAMARA: Is that what it is? Well then, it's in the safety zone. What did they do, put it in the deed, or just put it in a written notice from the broker?

MS. CASTNER: No, it's in the deed.

MR. McNAMARA: Are you sure? I thought it had to be something that the broker got signed when they--

DR. ABUCHOWSKI: The broker is definitely required to notify.

MS. CASTNER: I know it's on the deed because we just sold a piece of our property.

MS. NAGLE: In Reddington they still haven't adopted the safety zone.

DR. ABUCHOWSKI: I think that I can understand it being in the safety zone being part of the deed.



MR. KETYER: I think that from a legal standpoint, the purpose of it being in the deed is to protect the seller from any nondisclosure, and I think it would probably appear in an Affidavit of Title, as well.

MR. HINES: Protect the seller or the buyer?

DR. ABUCHOWSKI: The seller, because if you don't notify the buyer, you're in trouble.

MR. HINES: The Realtor is ultimately responsible. Supposedly, as I understood the law, the Realtor is responsible for not advising the perspective buyer. One force of rule the Realtor is supposed to be the agent of the seller, but he supposed to be the agent for both, really.

MR. McNAMARA: Let's do a consensus on it. This isn't a final vote. In favor at three miles?

MS. NAGLE: I don't think that's bad.

MR. McNAMARA: Linda?

MS. CASTNER: I think it's all right.

MR. McNAMARA: Okay. So it's -- there was five to one.

I would like to ask Linda to rewrite the bullet points and the executive summary.

MS. CASTNER: Wait, wait. Not the executive summary.

MR. McNAMARA: I've asked Fred Telling to do that. I will do it myself. Does anyone else want to take a shot at it? Anybody who does want to take a shot at that-- I'd like to get at least Linda and Fred Telling, and anybody else that wants to take a shot at it if you would just do it and fax it to me. I won't be working on this until Sunday, probably not until Monday.

Then we will try and revise this, and my hope is that we can deliver a bona fide second draft of the report to you by December 5.

I hope that you have all already received an invitation to come share some Christmas cheer with Ann and me on Friday, December 5 or 6, whatever Friday is. At that point, I am going to try and have these so that we can give you each a copy. But if you can't do that, then I will see that you get a copy in some other form.

I can't think of any other business to address.

MS. CASTNER: Was this supposed to have low interest loans or something? Remember that conversation about low interest loans?

MS. NAGLE: I think that's already in the works, in the Legislature.

MR. McNAMARA: Well, yes, there is one that is in the works now, and there is also provision for low interest loans up to \$100,000, I believe. There is a limited low interest loan that's already available. The problem with low interest loans is that airport businesses are such poor businesses that by the time the proprietor wrestles the property out of debt from the last inheritance tax or the last mortgage, they don't want to go back into debt, even at low interest.

MS. CASTNER: It's just another strategy.

MS. NAGLE: I think it's already--

MR. McNAMARA: I do think it's working. I'm not sure that we need to recommend it, but if you do--

MS. CASTNER: I forget where I saw it. I think it was some newsletter.

MR. McNAMARA: You've got the power of the pen, in between mowing the lawn and paying your taxes.

MS. CASTNER: And doing windows.

MR. McNAMARA: With that, at 5:05 we will adjourn this meeting.

**(MEETING CONCLUDED)**