



Clark County Planning Commission

Karl Johnson, Chair
Matt Swindell, Vice Chair
Bryant Enge
Steve Morasch
Bryan Halbert
Eldon Wogen
Jack Harroun

CLARK COUNTY PLANNING COMMISSION THURSDAY, MAY 18, 2023 MINUTES OF PUBLIC HEARING

Public Service Center
Council Hearing Room, 6th Floor
1300 Franklin Street
Vancouver, WA\6:30 p.m.

CALL TO ORDER

Planning Commission Rules of Procedure

OHNSON: Good evening, Planning Commissioners, members of the public and staff members. I'd like to call this hybrid public hearing to order for Thursday, May 18th, 2023. My name is Karl Johnson, and I'm the Chairman of the Clark County Planning Commission.

The role of the Planning Commission is to review and analyze comprehensive plan amendments, zoning changes, and other land-use related issues. We follow a public process including holding hearings during which the public has an opportunity to provide additional perspectives and information.

In legislative matters, the role of the Planning Commission is advisory. The County Council will hold separate hearings, they will consider our recommendations, and they will make the final determination.

The Planning Commission will conduct a public hearing tonight and take testimony. If any public comments were received before tonight's hearing, they have been sent to the PC members and entered into the public record.

County staff will present first and then the Planning Commission can ask questions. Next, we will invite the applicant to speak, if there is one, then members of the public who wish to provide testimony.

When we get to the public comment portion of our agenda, we will provide more information on how to participate both virtually and in person. However, if you are in person tonight and wish to provide comment on a hearing agenda item, please sign up via the sign-in sheets at the back of the room.

During the public testimony you will have three minutes to speak. The remarks should be directed to the Planning Commission only. Please do not repeat testimony that already has been provided.

At the conclusion of the public testimony, staff and the applicant may respond to the comments and the public portion of the hearing will then be closed. The Planning Commission will then deliberate and make recommendations to the County Council.

For both virtual and in-person members of the Planning Commission and staff, please ensure that your microphones are muted unless you are speaking. Planning Commission members, when you make a motion and/or a second a motion, please state your name for the court reporter.

Right now, I would like to ask any of the Planning Commissioners, do you have any conflicts relating, conflicts of interest related to the hearing items tonight? Hearing none, Sonja, can we get a roll call and any introduction of guests.

ROLL CALL VOTE

ENGE: NO RESPONSE (was in attendance)
HALBERT: HERE
MORASCH: HERE
WOGEN: HERE
SWINDELL: ABSENT
HARROUN: NO RESPONSE (was in attendance)
JOHNSON: HERE

Staff Present: Oliver Orjiako, Community Planning Director; Jacqui Kamp, Deputy Director; Christine Cook, Senior Deputy Prosecuting Attorney; Jose Alvarez, Planner III; Sonja Wiser, Program Assistant; Larisa Sidorov, Office Assistant; and Cindy Holley, Court Reporter.

GENERAL & NEW BUSINESS

A. Approval of Agenda for May 18, 2023

JOHNSON: Next on the agenda is I'll take an approval of the agenda for May 18th. May I get a motion and a second.

HALBERT: Bryan Halbert here. I make a recommendation that we **approve** the agenda for May 18th.

WOGEN: This is Eldon. I **second** that motion.

JOHNSON: We have a motion and a second. All those in favor. I said all those in favor.

EVERYBODY: AYE

JOHNSON: All those opposed? Motion passes.

B. Approval of Minutes for April 20, 2023

JOHNSON: Can we get an approval for the minutes for April 20th, 2023.

WOGEN: This is Eldon. I **move** that we approve the minutes for April 20th, 2023.

HALBERT: Bryan Halbert, and I **second** that motion.

JOHNSON: Sonja, can we get a roll call on this.

ROLL CALL VOTFE

HALBERT: AYE

MORASCH: AYE

WOGEN: AYE

HARROUN: Jack is not here so it's (inaudible).

JOHNSON: AYE

C. Communications from the Public

JOHNSON: The next portion of the hearing are communications from the public. These are for items that are not listed on tonight's agenda. So if there's anybody here for something that is not listed on tonight's agenda, Sonja, can you provide instructions on how to comment.

WISER: Can you share the comment on screen, Larisa. For attendees using their computer or Webex application, if you would like to speak, you can please use the raised-hand icon. Larisa will be putting that on the screen in a minute.

For attendees using the telephone audio only option, press star 3 on your phone's number panel to raise your hand. For those in person that would like to provide comment, please raise your hand. Once acknowledged, you may come to the microphone toward the front of the room.

Public comments are limited to three minutes per person in order to accommodate all speakers. Please provide your name for the court reporter. Again, this portion of tonight's hearing is only for items not listed on tonight's agenda. Are there any people raising their hands, Larisa?

SIDOROV: I do not see any raised hands.

JOHNSON: Okay. Nobody is responding to the items not listed on the agenda. Next up will be public hearing items. Again, a reminder to the public, if you are providing public testimony in person, please have signed up on the sheets that are in the back of the room. If joining remotely, instructions will be provided at the appropriate time by staff. So here we go. Up first is the Chelatchie Bluff adopting ordinance. It will be presented tonight I assume by Jose Alvarez. Jose.

PUBLIC HEARING ITEMS

IV. PUBLIC HEARING ITEMS

- 1. Amendment to Ordinance 2022-07-01:** A proposal to repeal subsection 5 of section 2 of Ordinance 2022-07-01 related to CPZ 2021-00006 Chelatchie Bluff which added a Surface Mining Overlay (SMO) to four parcels totaling 330 acres. This proposed action is in response to the Growth Management Hearings Board Final Order that concluded that the county's action to add the overlay did not comply with the Growth Management Act and is invalid as interfering with the GMA goals due to a SEPA violation.

Staff Contact: Jose Alvarez, Jose.Alvarez@clark.wa.gov, 564-397-4898V.

ORJIAKO: Good evening, Planning Commission members. For the record, Oliver Orjiako, Community Planning Director.

Yes, Jose will be giving the staff report, but before that I would just like to provide an overview of a brief background, following that then Jose will give the summary of the staff report primarily focusing on the section of the County Code that requires the County to take action as quickly as we can even when we are out-of-cycle, by that I mean the timeline, the once a year cycle to review annual reviews and docket.

If we are out-of-cycle our code provides that if there is any ruling from the Growth Board or the courts we have to act or take action as quickly as possible. So Jose is going to focus on that section of the code plus the summary of the staff report. We have our legal counsel, Ms. Chris Cook, who will also be providing a short summary of why we are here.

But before that, the Planning Commission is aware that the Chelatchie Bluff application to apply a surface mining overlay on the 330 acres are in the Chelatchie area currently designated as Forest Tier 1 80 was before you and the PC held a work session I believe that was on December 2nd of 2021, how time flies.

You also held your public hearing and took testimony on this same matter on December 16th, 2021. You did make a recommendation for approval, that recommendation went to the Council and the Council, in this case Clark County Council, held their own public hearing on July 19th, 2022.

Following the Council action, an ordinance was adopted, Ordinance 2022-07-01, in a sense identifying what the action that the Council took relative to all the annual reviews that the County reviewed. However, the action of the County was appealed to the Growth Management Hearings Board and the Growth Management Hearings Board is a tribunal that reviews appeals of Growth Management Act related issues.

And on I believe March 22nd, 2023, the Growth Board issued their final order on that appeal and they ruled, which I know that our legal counsel is going to address, they ruled that the County violated the law as it relates to the Growth Management Act.

One of the things that the County and staff did was to withdraw the Determination of Non-Significance

that we issued on December 1st, 2021, I believe 2021 and then issued a determination that the project is likely to have a significant adverse environmental impact and then therefore on April 5th, 2023, we issued a Determination of Significance.

I will turn it over to Jose Alvarez to go over the staff report. Following that, Ms. Chris Cook will again summarize some of the reasons why we are here and then there will be public testimony. I'm sure that the applicant will likely give testimony, and then the public as well, and then both Chris and I and Jose are here to answer questions that the Council, the Planning Commission may have. So with that, I'll turn it over to Jose Alvarez unless you have questions for me.

ALVAREZ: Okay. Good evening, Planning Commissioners. Can you hear me okay?

ALVAREZ: So, I'm just going to give you a brief background, what the proposed repeal action is, our findings and recommendations and then the process and next steps. So, there's four parcels totaling 330 acres and this is out in Chelatchie Bluff in the northeastern part of Clark County just outside of the Chelatchie Rural Center and on the map on the right is the overview of the area.

The parcel here with the RI is the old International Paper Mill site and so the properties are just outside of that. Again, this is a map showing the four parcels and the surface mining overlay that's supposed to be removed. There's one parcel that already had a pre-existing surface mining overlay and that's not affected by this.

Again, as Oliver mentioned, July of 2022 the Council approved the Ordinance 2022-07-01, which added the surface mining overlay on those four parcels. September of 2022 the ordinance was appealed by the Friends of Clark County. On March 22nd, the Hearings Board issued a final decision and order and ruled that the County had improperly made a Determination of Non-Significance with respect to the surface mining overlay and that the ordinance approving the SMO did not comply with the Growth Management Act and is invalid, is interfering with the GMA goals because of the SEPA violation.

On April 5th, 2023, Clark County updated their SEPA determination by withdrawing the Determination of Non-Significance issued on December 1st of 2021. And also on April 5th, the County determined that the project is likely to have a significant adverse impact on the environment and issued a Determination of Significance.

The proposed action which the repeal of Subsection 5 of Section 2 of the ordinance is what's in front of you this evening. And the applicable criteria is under 40.560.010B(6)(d), that amendments can be reviewed and acted upon outside the annual amendment cycle, which is our once a year update cycle.

Under (d) one of the exceptions to that is to the once a year is to resolve an appeal of a comprehensive plan adoption or amendment filed with the Growth Management Hearings Board or a court of competent jurisdiction pursuant to RCW 36.70A.300, and we find that this criteria is met and is applicable.

This is just showing the applicable criteria and that we just agree with, the staff report does agree with

that. We had a work session and a robust discussion two weeks ago May 4th.

We're at the hearing this evening and we have a hearing scheduled with Council on June 27th. That concludes the presentation. I think Chris Cook is going to add some comments unless you have any questions for me at this point.

JOHNSON: Chris, do you want to add to this before we --

COOK: Yes, thank you. My name is Christine Cook. I'm a Senior Deputy Prosecuting Attorney with Clark County. I represent Community Planning and have some thoughts on this this evening for you.

The Planning Commission is asked this evening to recommend the repeal of Section 2(5) of County Ordinance 2022-07-01 and that portion of the ordinance approved placement of the surface mining overlay on the four parcels totaling 330 acres that you were just shown on the maps that Jose presented.

And one of the questions that came up during the Planning Commission's work session a couple of weeks ago was why, what changed. Well, essentially the understanding of the law changed as that law exists now.

The final decision and order by the Growth Board stated that environmental impacts must be analyzed in detail before decision is made to apply the SMO and the failure to do so rendered the ordinance section noncompliant with GMA and invalid.

The Growth Board specifically criticized the County's timing in taking the actions so that the ordinance was adopted and then the major environmental impacts would be analyzed at the time of permit application.

Now, I don't necessarily agree with everything in the Growth Board's final decision and order, but that is the decision and order at the moment and I wanted to read for you just a little bit.

The Growth Board stated Ordinance Number 2022-07-01(B) Section 2, Sub (5), places at risk 330 acres of environmentally sensitive lands by authorizing mineral extraction without an adequate analysis and consideration of the potential adverse environmental impacts of this action. Thus, the Board finds that the continued validity of Ordinance Number 2022-07-01(B) in particular Section 2, Sub (5) that amended the county comprehensive plan and zoning designation Forest Tier 1, FR-80, to add a surface mining overlay on four parcels substantially interferes with Goal 10 of the GMA. And then following that the Board ordered the County to come into compliance with the final decision and order.

So that is what staff recommends you do, that is what the Prosecutor's Office recommends you do. Now, the applicants strongly oppose the proposal to repeal and they've argued a few things.

First of all, they say the County is not entitled to even consider this because of the timing, it's out-of-cycle, it's not an annual review and so the County can't amend the comprehensive plan.

The general rule in RCW 36.70A.130 is the comp plans can be amended once a year; however, there are exceptions to that rule and Jose put in front of you the Clark County Code's wording of the exception which is taken from and mirrors GMA's wording. And if I can find it we'll be in good shape.

So, again, it's in RCW 36.70A.130 and what it says is that "after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court."

And applicants make some argument that this wouldn't resolve the Growth Management Board appeal. Actually, this would bring the County into compliance with the Growth Management Board's order and it would do so, and taking up this proposal is absolutely consistent with the County's practice over the last 14 and a half years that I have been here when faced with adverse rulings from the Growth Management Hearings Board. This is absolutely consistent with the statute and with the code, that argument does not carry any weight and should not be given any weight.

The applicants also argue that, well, the County should have done something else. When faced with an order of invalidity King County did other things, they talked to Commerce and Commerce said, okay, you're fine.

So I was present and in conversation with the attorneys for the applicant and the King County Deputy Prosecutor, I was part of that conversation and I understand what occurred there. All I can say is that that's great for King County. Commerce has never provided the courtesy to Clark County since I have been here again of providing grants and loans when the County was out of compliance and ruled invalid.

As for talking to the Growth Board, you don't talk to the Growth Board, they're a tribunal, they're an appellate tribunal, you file motions and so forth, and when the County has taken action to come into compliance, then the County will file a motion with the Growth Board. These are not again good arguments as to why the ordinance should stand.

Next, they argue that this would, well, this will hurt the appeal. The County and the applicants have appealed the Growth Board's decision, the appeal is before King County -- King County right -- Clark County Superior Court right now. Tomorrow we anticipate filing a motion to send it to the Court of Appeals and there are legal arguments based on coming into compliance that we will have to address before the Court of Appeals will rule on our appeal, I absolutely anticipate that. That does not mean that the County should not do it, it means that we should make the arguments, so...

The last issue that the applicants raise is that removing this surface mining overlay would present a disincentive to mine in Clark County. So there are a number of places in Clark County that have the surface mining overlay but no landowner is entitled to a surface mining overlay, they're entitled to ask for one. If the applicants want to mine in Clark County, they should do what they're asked in terms of the Determination of Significance and provide an environmental impact statement.

They -- if we win our appeal, which of course is not guaranteed, but if we win our appeal, then the ordinance once again in resolution could potentially be changed. I'm sorry, not the ordinance, but the comp plan designation.

So at this point our view is that the law says that the ordinance that applied the surface mining overlay is not compliant, it's invalid, the Growth Board ordered the County to come into compliance and the proposal is that the County repeal Section 2, Sub (5) of the ordinance so that the County may do so and proceed with the remainder of the issues regarding that property, the remainder of the proceedings regarding that property and with its other planning tasks of the next couple years which are significant. So if you have any questions, I and staff would be happy to answer them.

JOHNSON: I have a quick question. If it's, one, on appeal, Section (d) of the where -- okay. So now we can just right now do this right now whereas if it comes back it would have to be, it can't be out-of-cycle, we have to wait a year; right?

COOK: Or, alternatively it could be with the update, the comprehensive plan review and update.

JOHNSON: But the applicant, my question is the applicant doesn't get the same, this is -- has to be resolved right now, if you go into appeal, that doesn't apply to the applicant, so he technically could wait a whole year or a whole cycle until he would resolve and get back to where he's made whole; is that correct?

COOK: What I'm saying, first of all, we don't know when the Court of Appeals is going to rule, it's not there yet, it could be more than a year just before the Court of Appeals rules, so there's not going to be a quick, oh, you win, but after that --

JOHNSON: Right, so I understand that.

COOK: After that the --

JOHNSON: Then it can't be out-of-cycle.

COOK: -- comprehensive plan review and update occurs in June of 2025. So my view, unless I'm persuaded differently which I haven't been, is that that would be another opportunity to look at this. In the meantime, there is the opportunity to work, for the applicant to work on environmental analysis.

JOHNSON: Is there any questions from any of the Planning Commissioners for staff on this?

Questions of Planning Commission

WOGEN: This is Eldon. So the Growth Management Board said they interpret the law to mean that when the applicant, when the SMO application is made that the environmental statement, environmental impact has to be done at that time; correct?

COOK: I believe so. There were two parts of Friends of Clark County's, well, there were three parts of their issue. One, they said that the County improperly issued a DNS; two, they said that the County same thing, improperly failed to issue a DNS; and what was number three, number three was, ah, yes, that the DNS was improper because amending the comp plan in this case was a non-project action.

So the Growth Board specifically said, you know, it was a non-project action that that was a correct determination by the County, but even though it was a non-project action, the County should have required detailed environmental analysis because there was detailed information about the area so, yes, a DS was required and that requires some form of Environmental Impact Statement.

WOGEN: This is Eldon again. So what basis did they, how did they come to that decision, was there priors to that where they had made that decision that Environmental Impact Statement is needed at that time?

COOK: Well, there is case law and there are a variety of aspects of the rules and the statutory scheme that were important to them. They held that consistent with WAC Chapter 197-11 that the environmental analysis should be done at the earliest time possible.

Now, in here's the issue as I see it, that there's a great deal of information about that property. Lots of people know about the property. There's not so much detail about the mining project, and depending on what the mining project turns out to be, it could have different environmental impacts, that's my issue with their ruling aside from the fact that it calls into question other non-project actions that the Planning Commission reviews for annual reviews all the time when there is a pretty decent level of detail about what might but isn't guaranteed to be developed on a chunk of land that you're asked to change the comp plan designation of.

Like when something, you know, somebody wants to change it from say urban holding to three types of residential zones or when somebody wants to change residential to commercial or vice-a-versa. Oftentimes we get presented with a master plan or a conceptual drawing, those aren't applications for those particular developments and there's no guarantee, but there's a high level of detail there.

Under the Growth Board's reasoning does that mean every time you all are presented with a conceptual plan that there has to be an environmental analysis based on that conceptual plan, that's what they're saying. So that's --

WOGEN: In other words, the applicant could go through the rigor of going through the environmental impact analysis based on not much planning and then --

COOK: Hopefully they know more about what they intend to do than we do, but they haven't told us.

WOGEN: All right. But when they do come through with that, they may have to do that over again if it varies.

COOK: Well, you know, there is such a thing as relying upon past Environmental Impact Statements and I would say that when they do come through the permit application process they will be required to do some environmental analysis because that's part of site plan review which they'll have to do and their conditional use permit they'll have to undergo environmental analysis for them.

By that time they presumably will know things like are they going to use the train, for how much of their mining product will they use the train and therefore how much will have to go by truck and what will that number of trucks do to the roads, to the neighborhoods, but they should know where on the property they're going to actually mine, so things like that they will be able to analyze.

WOGEN: Thank you, Chris.

COOK: You're welcome.

JOHNSON: Any other questions for staff from anybody? Okay. With that said, is there an applicant here tonight? Can we have the applicant come and speak, please.

Applicant Presentation

HITZEL: Jamie Howsley should also be on the line, he's going to present, but I'll be available if there's any additional questions or verifications.

JOHNSON: Do we have Jamie on the line? Okay. Jamie, are you there?

HOWSLEY: Good evening, Chair and members of the Planning Commission. For the record, Jamie Howsley, attorney for Granite. Just procedurally before I begin my testimony, Mr. Hitzel with Granite Construction is available as well to provide testimony, and I don't know what the pleasure is in terms of having additional members of the applicant team speak, but certainly I'd like to go forward with my testimony.

I appreciate Chris's response there, and while I do agree with her about the implications in terms of the Growth Board's decision, I disagree with the approach that the County is taking here in terms of trying to reconcile the Board's decision.

From our perspective, as our letter indicates, we believe that the County lacked the authority to take this action as an out-of-cycle amendment simply because removing this SMO doesn't resolve this appeal because the County is literally appealing this decision as we speak collectively with us and BRP as Chris had indicated.

Furthermore, we do believe that removing the SMO poses the potential risk to create a mootness issue for the County's appeal of the Growth Board decision and simply put that is very concerning for the applicant and property owner and the appeal because it potentially makes the situation where there's no case or controversy that Division II can provide relief upon.

And I know that Chris in her maybe winding up about this has talked about the public interest aspect of a decision and, you know, that may or may not exist here, but quite frankly our client is not willing to run that risk of doing that in a case.

So I think that there's less intrusive means to essentially get to the County where they need to be and so I view this as potentially, and I said this to a few people, that the County's using a sledgehammer approach here to the Board's order of invalidity instead of using a scalpel to exercise a different way to define the same relief and get out from underneath the order of invalidity and we can have a discussion about that if the Commission wants to.

The County has several means at their disposal to do this. First of all, they could go back to the Growth Board and seek clarification and/or seek compliance because they have in fact issued a Determination of Significance in this case.

They rescinded the DNS and have issued a DS and that's effectively the highest threshold determination that the County could issue in this case requiring us to conduct an Environmental Impact Statement and that's essentially what the Growth Board had indicated should have happened in this case and so, you know, one, that box is checked.

Secondly, as Chris had indicated, she was present for a conversation that we had with King County counsel where they were in a similar situation with a winery and distillery ordinance that the Growth Board held invalid and they took that up on appeal and subsequently they have been winning their appeal against the Growth Board, but in the meantime they continue to have direct conversations with Department of Commerce because the main concern here is that an order of invalidity threatens the potential for the County to get grants to conduct other GMA planning exercises, but in that particular case King County was informative of Commerce making them aware of the situation, making them aware that the matter was going up on appeal to the Court of Appeals and Department of Commerce understood that situation and an order of invalidity doesn't mean that you automatically are prohibited from getting grants, it's certainly discretionary, and we're just asking why hasn't the County even had that conversation with Department of Commerce to find out if that's even a possibility here.

Now, in terms of the implications of repealing this ordinance, this essentially eradicates three years of hard work and collaboration with the County, it absolutely goes against the policy direction that the County Council has been wanting here related to SMOs.

Basically we have, as our other Granite letter indicates, we have a very limited supply of raw rock materials to support development and as we are looking at a new comp plan cycle with new population growth projections we will essentially be out of rock without additional mines coming online.

And so suspension of this ordinance puts at risk the potential of this mine coming online even, you know, even if we were to win the Court of Appeals case because essentially, this is the first time that I've heard this by the way from county staff, that we may be able to resurrect an ordinance after a Division II decision or stick it in the larger GMA update because in prior discussions with them they've suggested,

no, you have to go back through the annual review process again and that doesn't make sense to us because it's, one, it's foreclosed right now, and, number two, you know, it wouldn't likely be reopened again until after the next comp plan is completed sometime in, you know, 2026, so...

And quite frankly, you know, the repeal of this if a mootness issue were to be created it creates sort of that groundhog day problem again where we would be essentially filing a new application only to get the same decision from the Growth Board that you need to do an EIS to even change the zoning on a project, so that doesn't make a lot of sense to me.

I think that the one thing that the County and the applicant and the BRP team do agree upon is that this decision doesn't make a whole heck of a lot of sense from a policy standpoint because effectively it renders potentially all annual reviews which the Planning Commission hears on a year end and year out basis in jeopardy because the County as the annual review codes require it, the applicant has to provide, you know, traffic kind of detail, like will it impact trips, you know, they often do provide conceptual plans, but the actual detailed materials for an application, you know, don't come until after you've got the zoning approved and you know that you can submit a development application.

No right mind developer in the world is going to conduct all these studies and all of this analysis that cost consultants, you know, hundreds of thousands of dollars and potentially more to develop these plans simply to change the zoning on something, that makes no sense, it makes no policy sense, I think that that's exactly why the County is interested in appealing this decision as well as I'm assuming there will probably be other jurisdictions around the State of Washington that feel sort of the same way about that.

So I think with that, we just again think that this is the wrong solution here to the issue of getting into compliance. The County's got some time to go have these conversations with Commerce or seek clarification from the Board or, you know, certainly we've proposed other solutions such as entering into stipulations with the County as to not submitting applications on this site until the matter is resolved with the Court of Appeals.

I think there's a million other ways to skin this cat and I think using this really heavy handed approach isn't the right thing to do here. So with that, I know you guys have a lot of questions because I listened to your work session intently and, you know, I'm here to just offer our perspective and it's probably a different perspective than the County staff has offered.

Questions for the Applicant

JOHNSON: Thank you, Jamie. Questions for the applicant?

HALBERT: Yeah, I have no questions at this time.

WOGEN: Well, I'm just wondering, I know, Chris, that you were listening to him, was there any new information that he was presenting there that was contrary or did you want to elaborate on?

COOK: I have filed a motion for clarification with the Growth Board in the past and their response has been you are not in compliance Clark County, go fish. I haven't done it with this particular case because the last time I, you know, we spent a lot of time and effort on it and we were slapped around pretty hard by the Growth Board, it didn't seem to make a whole lot of sense. So I don't really think that's a great solution.

And as for stipulating, that does nothing to bring the County into compliance. The issue is we've got an ordinance that the Growth Board says is illegal. The only way I know to come into compliance is to get rid of the ordinance.

JOHNSON: Chris, I've never heard of something like this in 14 years coming back to us. Now, that's my first question. The second question is, aren't we setting a precedent by opening this up for other people because if this happens to this applicant, what stops it from happening to every other applicant just like you stated before? I don't understand something here.

COOK: I don't understand what you mean by it never coming back. When we were -- when our 2016 comp plan had some problems with it we took every one of those back and went through the process and asked the Planning Commission to look at the solution and --

JOHNSON: I remember that. But I thought we waited for appeal on that. Did we not wait or am I wrong? Didn't we wait for appeal before we did that?

COOK: We did some appeal and some not appeal.

JOHNSON: So if that's the case, my problem is this stuff coming back to us and then it's like, I understand why we have to make the decision, but the decision just seems like it's moot and my problem is is that if in fact it does, just like you said, opens the door or makes it muddier for people, now what's stopping every one of these decisions now going forward to being taken up and saying, yes, I have an Environmental Impact Statement for a framework or whatever you want to call it.

COOK: That's why we're appealing it.

JOHNSON: Right. And so then isn't it a statement kind of vote to say no or are we going to be -- my question is this, we always hear this we're going to be, if we're out of compliance we're not going to be able to get grants, this to me it's becoming a veiled threat because we hear it all the time on this, which could be true, but it's never happened.

COOK: Oh, that's not true.

JOHNSON: Okay. Maybe it has.

COOK: It is not.

JOHNSON: When has this county been denied, tell me when.

COOK: \$10 million for the 10th Avenue bridge that is east of I-5 over that, I forget what creek it is, but --

JOHNSON: That was because of the --

COOK: -- we had been granted, the grant had been approved and they were ready to send us the check.

JOHNSON: But then my question is they are likely to if we were to say, no, this is not what we're going to do until we hear the appeal. See, I don't understand why if we're going to appeal this, why does this have to happen right now, and if it's happening right now, then the threat of grants being held up, why can't it be resolved on appeal?

ORJIAKO: Again, this is Oliver, Community Planning Director. I don't think it's only the appeal or the grant, let me put it that way. When the Growth Board issues their ruling, they give the County a time frame to come into compliance, in this particular matter we have until September 18th to come into compliance.

Now, what we are trying to do is to come into compliance, that's number one. The invalidity order is a secondary issue but that is part of their ruling. That invalidity order in my opinion applies really to the applicant even though this is their final order.

The applicant cannot come in now to make an application, they can -- the County cannot issue them application, so they're stuck. We find ourself in a corner whereby we have to comply or try to come into compliance.

The issue that you're raising is a legitimate one and that is why the County is appealing the broader question about how will this apply to other future application or applicants, that is why they are appealing, and no one knows when that will be resolved, but the interim I don't know what will happen when April 18 comes, what will the Growth Board rule. If you ask me to go talk to Commerce, they're going to find us that we are out of compliance plus the invalidity order.

I think as I stated earlier whether you agree with the ruling or not, the Growth Board find that we violated Goal 10 of the Growth Management Act which is the State law. As the responsible official I have to come and find a way to come into compliance at least.

When you say that you've violated the law there is some penalty. We are not here arguing what the penalty should be, should it be ten years, should it be five years, should we come and complete this in next six months, the goal is for us to come into compliance, some of these other issues will be ironed out.

What do I mean by that? I don't think the Council and my department will be making a decision, a, do

the applicant have to come back or re-apply. The Council will probably say you have an application, if the ruling favors you, we will make a different decision. If it doesn't favor you, at the end of the day we still have to come into compliance.

JOHNSON: Any other Planning Commissioners have any questions?

HARROUN: This is Jack Harroun.

JOHNSON: Go ahead, Jack. Yes, I can hear you. Go ahead.

HARROUN: Okay. So I'm, I guess my, I don't know question or comment, the thing I'm struggling with most is I haven't done it yet because I know what they're already going to say and, man, I struggle with that when we're talking about something that sets such an extraordinary precedent that is going to create an avenue for whatever group that wants to stop any development to challenge and quite frankly it doesn't strike me as our staff is doing a diligent job in protecting the residents interests.

And so I mean when you're like, well, I haven't even bothered to ask on something that I that really is so significant that we're appealing it, help me understand that because that, that is I'm struggling with that and I lean, you know, we just got these the comments from the attorneys and I'm, I agree with their arguments on this stuff and we already at workshop we had really significant concerns about the precedent and how that develops an extraordinarily powerful strategy for anybody that wants to stop any kind of development. So what am I missing here I guess?

COOK: Is that a question?

JOHNSON: It sounds like he just wanted clarification, Christine.

COOK: A classification on what? I have spent I cannot tell you how many hours working to appeal this. The notion that staff are not diligently trying to protect the County here that just sounds a little insulting to me and I'm sorry but that's certainly, I don't think insult is appropriate in this setting. So if -- are you asking are we diligently working on it?

HARROUN: So, no, I'm not, and please forgive me for coming across as insulting, I understand how that can come across that way, but both you and Oliver said we haven't bothered to ask because we already know what the answer's going to be and for me that's on something so significant, I don't doubt your guys, the amount of time you have already put into this, but it doesn't mean that the task is complete.

And so I guess that's my -- and so I don't, I mean please I'm not trying to be offensive, but when I hear comments like that, it just it makes me go, well, I think we should at least try, I think we should maybe hit pause and see what else we can do before we take a very draconian action. So that's my, that's my thought. So I -- please don't take it as insulting, but that's just kind of where, you know, yeah, how it came across to me.

JOHNSON: Okay. Thank you, Jack. Any other questions from Planning Commissioners?

Public Testimony

JOHNSON: Okay. With that said, we're going to now move to the public testimony portion of the hearing.

Number one, is we need to make sure we limit our testimony to three minutes, so will there be a timer tonight, Sonja, on it, there will be a timer and it beeps a little bit before. Sonja, can you please now give instructions for the public comment.

WISER: Good evening. To be a party of record you must submit written testimony before, during, or prior to the close of tonight's hearing, or provide oral testimony at the public hearing, or request to be a party of record.

No person shall be a party of record who does not furnish their full name, e-mail address, or Post Office mailing address. If written comments were received prior to May 18th, 2023, they were submitted to the Planning Commission members and posted on the Planning Commission website.

Tonight's hearing is being transcribed by a court reporter, so please spell your last name and speak slowly. Public comment is limited to three minutes.

So tonight we'll take the Webex callers first. We'll start with those participants that have joined remotely via computer or telephone. Please raise your virtual hand or press star 3 on your phone to let us know you would like to provide comment. And Larisa will be taking the callers.

SIDOROV: Okay. The first one I see up here is Bryant. Bryant, I will go ahead and unmute you now. Bryant, I will unmute you now. Okay. Nothing's happening so I will move on to the next person. I don't see any other hands so I'll try Bryan again, Bryant, sorry about that.

COOK: Who are you trying to find?

SIDOROV: These are the people online that are trying to comment.

JOHNSON: Larisa, do you want to go with the people in the audience and then we'll come back and restart there?

SIDOROV: Sure. We can do the folks in the audience first.

JOHNSON: Thank you. Okay. With that said, we'll be calling you up with those of you that indicated that you wanted to speak. A couple of things, number one is, I think that microphone there is working, so please use that microphone for now. The second thing is, is very carefully and slowly state your name and so for our court reporter who is online too can get that down.

Also, I'm a school teacher so you all need to work on your handwriting, I'm just going to tell you that right now. So let's start with Steve Nolan, did you want to speak? Is Steve here? Okay. Steve. Peter Langley, did you wish to speak? Peter, could you come up and be our first person. Thank you, sir.

LANGLEY: My name is Peter Langley, L-a-n-g-l-e-y, and I just moved from Beaverton about four months ago to Hazel Dell just north of here. This is my first time here. I do not know much about the Chelatchie Bluff project, but I have one question first, and that is of the 330 acres how much is forested, what proportion is forested?

JOHNSON: Do we know that, Jose?

ALVAREZ: I believe all of it is.

LANGLEY: Is it mostly forested is all I really would need to know?

JOHNSON: Yes, just looking at it it looks like it's mostly forested.

LANGLEY: The picture we got at the beginning looks mostly like farmland. A lot of talk has gone on today about ordinances and laws and rules and regulations and timing and so on, but very little has gone on about the effect of removing woodland and I'm assuming that would happen if the applicant got their way, removing woodland on climate change and climate warming, so I'm like I'm making it a more general comment here.

We just today learned that this May is the has more 90 degree months than any other year in history and here we are talking about maybe allowing the group here to do strip mining of 330 acres most of which is wooded. To me this is not very sensible. We're not talking about a problem that's going to occur in 200-years' time, we're talking about a problem that we have right now.

So I would like to add my voice in a sort of a more general environmental way to those who oppose this development. I would not be too unhappy to allow them to go ahead and strip mine if I knew what they were going to do to reverse some of the environmental degradation that they know is going to happen. And I don't mean plant a couple of trees, I mean a real reversal of the degradation.

So that is all I want to say is that in this time of global warming we need to not cut down trees and that applies not only to this development, to all developments where there are a load of trees and sensitive environmental areas. Thank you.

JOHNSON: Thank you, Commissioner for, Langley, for your comments. Rod Hazen, did you say no? Rod? Okay. Okay. I'm going to Stephen M-a-n-z? No? Okay. Then I have one that's really, really difficult to read. It looks like Look or Nook, last name o-o-k, did you wish to -- what is your name, again, sir, so I can -- Howard. Do you want to speak? Okay. And your last name is what? Cook.

Okay. Come on up, sir, and sorry I just could not, I tried.

COOK: I guess that's one of the joys of life. I'm Howard Cook and I live in Chelatchie, downtown Chelatchie, not Amboy, get that squared away. Some of the problems you guys are up against, and it hasn't been addressed and I haven't heard of it anyplace being addressed, is what's happening what's around (inaudible).

Number one, you've got a volcano in the darn thing for one thing. You got Tumtum. You got a peak that's right across from the mountain that's a dike, that's a cone, and you got Tumtum which is a mountain, a cinder cone, and you got up Canyon Creek by a mountain, there's another volcano, and you guys are going to go in there and start moving, I won't say you guys, sorry about that, but you're going to try and move earth and then something's going to start shifting in the soil on there.

So there is shifting soil in that development you've got out of order to the it would be the west, there's a house that's up on a slough and that slough when they start shooting off big shots for their rock, it's going to be jarring things loose. There's another development of slough that's down towards Amboy a little bit closer to a house that's been built on it and it will come down into the prairie and you're going to be opening up a can of worms, they can all the way long with trucks or railroad cars, but it's asking for a disaster because you got material that has slid down before and come down into the prairie and it's something to be looking at because that's your hide that's on the line then, very true.

And once this gets going I feel they should have someplace that's more stable and stay away from like Canyon Creek, White Creek and East Fork of the Lewis. If you look on a map on the East Fork of the Lewis and, oh, Christ, the club that's up there that's up of Amboy, forget it, it's gone out of my mind right at the moment, but anyway, you look at this north side of that, there are big curves into the soil and in the mountain range along that and that's all shifted, all the soil is sloping to the south and it's shifted at some time and that has gone up and it has blocked the Lewis River from going down south and that's something else you have to think about when you start blasting the heck out of the country up there is it's going to cause problems.

And there's another thing that's going on is the developments. Chelatchie Prairie was a dairy farm area and there was three dairy farms in there, big ones, and now there are none. The land has been sold and subdivided and there's now tracts of houses in there and there's now talk about more houses being built in there. And if you go build more houses, you're going to cause more shifting soil, you're going to get somebody killed. That mountain side isn't that stable.

And you can look at it and get a old geologist and go take a look at it and I would urge you to do that before you go too far approving everything else underneath the sun. I think that's enough for me to give you something to think about.

JOHNSON: Thank you for your comment, Mr. Cook. Steve Hitzel, Hitzel. You're good. Okay. Steve, thanks. And then the last name I have is Teresa Hardy.

HARDY: Good evening.

SIDOROV: You're good to go.

HARDY: Teresa Hardy, H-a-r-d-y. Before the time restarts I do have a question. John Nanney who is a resident of Chelatchie who represented his neighborhood from the very beginning of this and attended the County Council hearing is -- had a conflict, there are two public comments that were sent to you, one was from Jim Byrne and the other was from John Nanney which is a resident, and he is really regretful that he cannot be here, but he every year works for the annual Windhaven Ride for Veterans and they're in the process of planning that and so he could not attend. So my question is, can I read his statement and still do my three minutes or is that counted as my three minutes?

JOHNSON: If his statement is already entered into the record, there is no need to reread his statement.

HARDY: Okay. Then what I'm hoping is is that each one of you carefully read that comment because his comment represents the neighbors in that community. And I think in listening to the work session -- I guess now I'll start for my own.

JOHNSON: Yeah, okay, start the time.

HARDY: -- in listening to the work session, last, the last, the work session, it was concerning to hear the direction that that work session went and it was a lot about, well, you know, we could set a precedent here and this would, and we're just not going to be able to get these grants so, you know, the reason for this so moving forward is because we need our grants, that is not the reason for this.

The Planning Commission and the County Council heard from the residents as you just heard from. There are serious environmental impacts in this area. Hopefully you've all gone out to look at a site visit of the site as well as went out to Cardai Hill. Let me just preface this, I'm speaking as an individual.

I think to presuppose that because of this decision it will spark decisions moving forward for people to raise concerns about DNS's in development is a little farfetched. To be able to get an attorney to represent a case like this takes a lot of money and a lot of time. The reason this came forward is because there are serious environmental impacts around several of our proposed mining overlays. We are using mapping from 2014.

At the County Council meeting yesterday it was asked of Oliver when are we going to have some more updated mappings. So we have proposals coming before us in sensitive environmental areas and these DNS' should not be granted when we have these concerns and we should be asking these applicants to tell us as the board has says we want more analysis and detail before we move forward this.

This is the bottom line here is issuing a DNS on mining overlays that seriously have huge wetlands, critical areas, streams, road damage, air quality, a lot of other things and that's the reason for doing this. The reason is not to prevent the County from getting grants. Everyone wants the County to get grants, it's to our benefit, but it is also to our benefit to look at what comes before us for mining overlays when some of these are hypothetical and maybe we need to hold off and say wait, wait until the Washington

Department of Natural Resources releases some more current maps.

There are other aggregate areas in the county that could be mined and using this threat, oh, if we don't let Chelatchie Hill and Cardai Hill go forward, oh, my gosh, there's nowhere else to mine in the county and what's going to happen. No, let's look at areas that really are potential that don't have these environmental significant things and then let's move forward.

To disregard the fact that the Growth Management Board says do more environmental analysis before you approve this is not an unrealistic ask. Is that the end of my time?

JOHNSON: That's three minutes, Teresa.

HARDY: Issuing DNSs non-project could run into problems and it's not around development.

JOHNSON: Thank you for your comment. Is there anybody else in the audience that wishes to speak that did not get to speak? Great. Thank you. With that said, we will now -- oh, we need to check, is he still there? Sorry.

SIDOROV: Okay. If you are online, if you would like to speak, please raise your hand. The directions are on the screen. I don't see anyone's hand raised.

JOHNSON: Okay. With that said, we will close the public testimony. Staff do you have any responses --

SIDOROV: Sorry, Karl. Just as you said that, Bryant came back on.

JOHNSON: Okay. Let's open it back up and let's get Bryant back on here.

SIDOROV: Bryant, I'm going to try to unmute you. I'm going to make you panelist for a second to see if that helps.

ENGE: Hang on. Can you hear me yet?

SIDOROV: Yep, go ahead.

ENGE: So, yes, I just wanted to let the Commission and the panel know that I've been listening since the start.

JOHNSON: Can you state your name please for the court reporter.

ENGE: This is Bryant Enge.

JOHNSON: Oh, it's Bryant. Oh, it's Bryant. Bryant, sorry. I've been hearing Bryant going I wonder

if that is Bryant. Okay. Thanks, Bryant. Sorry about that.

ENGE: Hey, no worries. I was stuck in the wrong box.

JOHNSON: So for those that don't know, Bryant is actually a Planning Commissioner, so he got stuck in the wrong box, so... Sorry about that, Bryant, I hope you heard everything. Okay. With that said, we are now going to close the public testimony, Larisa, is that --

SIDOROV: I'm so sorry, Bryant, I thought you were somebody else, but, yep, but we're glad you're here to join us. Yeah, that's it. That's all.

Return to Planning Commission

JOHNSON: Okay. Staff, do you have any response to the testimony?

COOK: Yes, I'm on here. Okay. I just wanted to remind the Planning Commission that the last speaker spoke passionately about the evils of the DNS. The DNS has been withdrawn, that's not at issue here, so...

JOHNSON: And if I may add and the same respond to that testimony, we are just dealing with what's presented for us as far as what the Growth Hearings Board has said to us. This is not specifically about whether a mine's going to be there tomorrow or the next day; is that correct?

COOK: That is absolutely correct. There is no permit application, you know, this is not the last step in figuring out what's going to happen with this property.

JOHNSON: Thank you for the clarification. With that said, applicant would you like to respond to any of the testimony? Jamie, are you still there?

HOWSLEY: Yeah, I'm still here. I just would echo what Chris had mentioned that, you know, we can't even submit an application on this project and the application would have to address all of the varied environmental and critical area criteria and in order to impact stuff you have to, you know, comply with the code and do a bunch of other analysis and so that's again that's really, really premature, we can't even submit an application in this case.

JOHNSON: Thank you. Okay. I'd like to bring it back to the Planning Commission for deliberation. And I'm going to go down the list, Bryant, since you finally joined us here officially, Bryant, do you have any comments or questions that you'd like to speak to?

ENGE: Yes, I do. Thank you. I want to go back to an earlier, I think Chris was citing something from the Growth Board in terms of authorizing the surface mining operation and that was that I want to be clear and I think we all know that that's not the intent that we were not authorizing any operation before of what you could do versus what you should do and, you know, this is what you could do and that's what we're talking about here, we're not authorizing any operation.

The other piece of this, and I want to be clear, that I am sensitive to the environmental impacts to the (glitch in the audio - inaudible) but there is a process by which we get to that and this is not the process in terms of getting to the environmental impact, this is a zoning change and this is not a project change, this is not implementing a project.

So I just wanted to share my concerns in terms of the things that I feel and let everyone know that I am also very critical to the issues of impact about sensitive areas. There is a process by which we need to follow that's fair to applicants and to the public to look into the area. I just wanted to add that in terms of my comments. Thank you. I appreciate the opportunity to comment.

JOHNSON: Thank you, Bryant. Bryan Halbert, do you have any comments?

HALBERT: Sure. Thank you. Bryan Halbert. I'd like to, you know, first echo Bryant's concerns and comments regarding the environment and I too am very sensitive to, you know, what, how the county develops and how the county addresses the environmental concerns, but I'm also even probably more concerned about the issues that the Growth Management Hearings Board has brought up and to the extent that that can impact future developments in Clark County and with our Growth Management Plan coming forward and how that would, what impacts or ramifications that have on that, so...

I also feel that staff has really taken this very seriously. I believe that they have looked at all options to appeal this issue with the Growth Management Hearings Board and I believe that they are in the best interest of the County using the right tools to protect the County and to have a path forward for resolution here even though I would find I'm not happy at all about this vote and, you know, go on the record and say I don't like it and I don't like being strong armed into voting something that isn't in our best interest, but it is in our best interest to be in compliance so thanks.

JOHNSON: Thank you, Bryan. Steve Morasch, do you have any comments?

MORASCH: Yes, just briefly. I'm concerned about the mootness issue that Mr. Howsley raised, I mean that was an issue that I thought of myself and was glad that he raised it, I think that's a significant concern. And I'm also not convinced that we've done everything we can to try to come into compliance without simply repealing, you know, what was already done.

It seems to me if we're going to amend the ordinance, the amendment should say that this change will not be effective and no development applications will be submitted until either the County approves an Environmental Impact Statement or a final decision from a Court is issued and all appeals have been exhausted and the Court holds that an Environmental Impact Statement is not needed, that would seem to resolve the issue that the Growth Board is concerned about which is they don't want to see anything happening until an Environmental Impact Statement is done, but it wouldn't put us back to square one which is what the current staff proposal would do essentially, you know, repealing the thing and either maybe taking it up in 2025 or maybe not, who knows, or the applicant would have to start over with a new application. So I just can't support that, and that's all the comments I have.

JOHNSON: Thank you, Steve. Eldon Wogen, comments?

WOGEN: So the Growth Management Board has interpreted law to state that at this point in the project, even though it's not a project, that an EIS was needed and the County didn't do right by doing that so they issued basically do it over. And so what I didn't hear is though -- we had till September 18th to, I think that was the date you said, Oliver, to make --

ORJIAKO: Come into compliance.

WOGEN: To come into compliance. What happens if you, if you're still not in compliance, you get fined or is there any priors on that, present or what happens?

COOK: The Growth Board would issue an order of continuing invalidity and is supposed to contact the Governor and suggest sanctions. The likelihood of sanctions being imposed is pretty low, but it complicates other things that the County is trying to do in the interim.

So if, yeah, and not just the update, but also Public Works issues, that was a, it was a Public Works grant that was withheld from the County in whatever it was, 2017, 2018, so that would give us then another six months to come into compliance.

So we would be out of compliance and, you know, they don't want to hear about it until you're coming into compliance. So that would be another six months that we would be in the status.

WOGEN: So you heard the comments from fellow Commissioner Steve, if there was anyway of, any other way that it could be done?

COOK: That was interesting because in the conversation that we had with the King County Prosecutor and the Deputy Prosecuting Attorney who had dealt with the case that the applicants lawyers put in their brief, or not their brief but their memo, and said, well, King County talked to folks and it worked out fine, she said that they had put something similar in their ordinance, they had even adopted a moratorium in King County to prevent applications and basically the Growth Board didn't care. So with them they were subject to invalidity until the Court of Appeals ruled which was shortly before the ruling from the Growth Board in our case.

WOGEN: So based on all your years of experience dealing with these entities, this is the best path to go is to repeal?

COOK: That's my evaluation of the moment certainly, and when I say at the moment, I don't mean I came upon that today, but, yes, I think so.

WOGEN: Because I share some of the grief that other Commissioners have said about how this sets different, a difficult precedent for others coming along, that's not good, but I think I --

COOK: I agree.

WOGEN: -- I think I understand the position that the County's in, really don't have much choice. All right. That's my comments.

JOHNSON: Okay. Thank you, Eldon. Jack, are you still available?

HARROUN: Yes, I am. Can you hear me okay?

JOHNSON: Okay. Jack, go ahead. Yeah, go ahead, Jack. Yeah, I can hear you.

HARROUN: Okay. So I -- we -- in my view we have two issues, we have the Growth Management Board and then we have the Department of Commerce which is controlling the purse strings. I'm not worried about the Growth Management Board from, I think that's going to be the legal process.

I think the Department of Commerce which is controlling the purse strings which seems to be driving this process is something that we need to explore more before we set this kind of precedent.

They're -- in my opinion there's a time it's like that we need to do what's right and that comes with risk sometimes and not just cowering because of the reality is the risk to, the risk to our county I think is far greater by setting this kind of precedent.

And, yeah, I mean, I'm incredibly sympathetic to the environmental concerns, I don't know if it's an appropriate mine site at all, but that's not what we're talking about, but this process shouldn't be weaponized against any kind of development in Clark County when we need to create housing and jobs and somebody else doesn't like it. So for me I'm a no on this for those reasons.

JOHNSON: Thank you, Jack. Well, you know, we went through, was it 2014 that we did the initial one, is that correct, Oliver, and, you know, it was contentious, it was both of these areas were filled, the doors were open with Livingston Mountain people and it was, I was just my first or second year here and it was cool man, it was democracy in action, but we, it seemed to me that we from our best interest, our best vision, we removed some, I don't know if we added any, I can't remember, but we came up with where the rock was and where we could best extract the rock from a county perspective, that doesn't mean that we were going to on that day, it was just an overlay, that's what we're talking about.

We're not talking about building mines or approving mines or anything, and it's hard to get in people's head when you say where are the resources, where do we get them from and where potentially, underline that word, can we effectively take them out of the ground.

And now we did all that work and I'm amazed, we come back and we have this issue. And I understand, Chris, that it is not an issue of where we're pulling rock, it's an issue of somebody coming in.

I do not like when I get into these situations where somebody comes in and says, well, you must do this

for the betterment of the county, to protect the county from legal action because I respect that, that's one of things I think we must do here.

But I also step back and I say, well, wait a minute, you know, why are we making this decision then if basically our hands are tied. I know what your answer is, Chris. But I'm saying from just, why are we having this angst?

Because somebody else wants to do something that is, it just doesn't sound right, the smell test it doesn't pass it, it doesn't pass this because we worked very hard on this, you did, staff did, staff did before, staff did now, but now we're backed against a corner.

If I don't vote for this, I mean if I don't refer my vote saying, well, I don't agree with this, then the County is harmed. But if I sit there and I say, well, I do agree with this potentially, again there's that word, we could be looking at a completely, what stops another person from walking in here dropping another lawsuit that says, no, I want on first test an environmental impact or whatever I want and that's frustrating. The process is frustrating.

And it's sadly I can count at least ten times that this has happened where I'm like, well, there's really nothing I can do except vote against my conscience, I don't like this. I don't think we should have to be going through this now.

I think in 2014 was a long time ago, nine years ago, I mean we dealt with this and we dealt with it the best we could and for some arbitrarily, I know you don't think they're arbitrary, Chris, but it's just frustrating.

So, boy, I'm stuck on this one because I want to vote no, but I just don't want the County to be on the hook for this, but again, Jamie's trying to find an interim way, you know, a different way.

We push the applicant back, that's not fair, they didn't do anything. They started this process whenever based on the information we gave them in 2014, and then somewhere, then an arbitrary decision comes along and it's frustrating.

So I'm not sure where I stand except frustrated. So that's my statement to the world and I'll get off my soapbox. With that said, gentlemen, is there any more comments, go ahead and speak now? I will accept a motion and a second, make sure Cindy knows who's making the motion.

HALBERT: I'll start it off. Bryan Halbert, and I would make a **motion** to recommend the repeal of Ordinance 2022-07-01. Subsection (5) of Section 2 of Ordinance 2022-07-01.

JOHNSON: Got to be clear. Thanks, Chris.

WOGEN: This is Eldon. I **second**.

JOHNSON: So we have a motion and a second. Sonja, can we get a roll call on this one.

ENGE: The first thing I want to do is recognize Clark County staff in terms of all the good work done they've done, Christine, especially you. My decision has nothing but support for you, but I in good conscience cannot recommend moving forward with staff recommendation.

My concern is that six months, a year from now some other place will be looking at this vote and they won't see the back and forth comments but they'll just see the vote and I want my vote to be NO.

WISER: Your vote is NO?

JOHNSON: Yes.

ROLL CALL VOTE

ENGE: NO

HALBERT: AYE

MORASCH: NO

WOGEN: NO

HARROUN: NO

JOHNSON: I want to vote NO but I'm going to vote YES based on what is best for this county as far as litigation so I vote YES.

WISER: It's 4 no, 2 yes.

JOHNSON: Okay. The motion **does not pass** and we move on. This concludes the one item on our hearing. Is there any old business?

COOK: That motion didn't pass. Would you like --

JOHNSON: I said that. I thought I said that, did not pass; right?

COOK: Yes, you said that. Do you want a different motion?

JOHNSON: Well, sure, Christine. Explain to me what you're trying to say there.

COOK: Perhaps someone who voted no would like to make a different motion.

JOHNSON: Is there anybody that would like to make a different motion based on some of the information we had said?

WOGEN: I voted no but I need help from counsel on what's she's leading up to.

COOK: Would you recommend that County Council not approve this?

JOHNSON: So hold on. So explain to me what you're --

COOK: It's the opposite of the motion that was just made.

JOHNSON: Oh, we made the wrong motion is what you're saying?

COOK: No, you made a fine motion.

JOHNSON: Clarify please. It's okay. Come on. You're saying would you like a motion --

COOK: Oliver is telling me that he is good with it as it is so I will be quiet.

JOHNSON: So, but I would like to clarify. So in the future if we did something like this and said no, we could send up another motion to the County to say, hey, what about this, is that what you're saying? I'm not saying --

COOK: Not to change the proposal, but I know in the past there was one time when there was a motion and people went one way but there was question afterwards, well, does that mean that they recommend the other thing and I was just trying to head that off but I guess it's not necessary.

JOHNSON: Yeah. That's funny that you said that because I was, I wanted to say this, I hope, and I never know, when I interviewed this last time I said I hope Council watches, listens to what we go through because I think it's a dissemination of that information from here to here and sometimes it's blown off like, oh, we'll just look at what the Planning Commission did versus try to listen because this is a great exercise of nobody's in big disagreement with other than what we're being kind of forced to do and so I think that gives them great information, but I hope Council listens, so...

COOK: Incidentally, I've been told by more than one Councilor that they would be watching tonight.

JOHNSON: Oh, good. That's cool. That's great. All right. So with that said, the Chair concludes the hearing that's on the agenda.

OLD BUSINESS

JOHNSON: Is there any old business? None.

NEW BUSINESS

JOHNSON: New business?

COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION

JOHNSON: I do want to put an official notice of sympathy. Matt Swindell lost his mother, that's why

he's not here, and it's pretty tough. So there's a sympathy card going around and so, you know, life hits us all and I know sometimes we just have to put on this face up here.

For all you in the audience, we're teachers and workers and we're just like you, we just happen to have this position, this volunteer position, so I appreciate what you said where you go not you guys because we're just trying to figure it out ourselves too so, and again remember we are just a recommendation, we are not the decision-maker, County Council will do that, so that was my other thing.

And any comment from you guys? Any comments from the virtual? Good to see everybody. It's good to be back. I missed a couple weeks and I'm glad to be back.

WOGEN: We're glad you're back.

JOHNSON: With that said, let's adjourn. Thank you.

ADJOURNMENT

The record of tonight's hearing, as well as the supporting documents and presentations can be viewed on the Clark County Web Page at:

<https://clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>

Television proceedings can be viewed on CVTV on the following Web Page at:

<https://www.cvtv.org/program/clark-county-planning-commission>

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