

WEBVTT

1

00:00:01.979 --> 00:00:16.260

Chairman Cliff Thier: I'm going to ask for, as you may have heard John mentioned before, if you've been on a little earlier. If you are not a commission member and you're not here representing me town or the applicant.

2

00:00:17.580 --> 00:00:19.950

Chairman Cliff Thier: Just deal with you would turn your cameras off.

3

00:00:21.450 --> 00:00:32.970

Chairman Cliff Thier: Chris, we have so many faces were concerned about bandwidth here. So if you would please turn the cameras off you'll still be able to watch proceedings and

4

00:00:33.870 --> 00:00:47.370

Chairman Cliff Thier: Later on when we take public comments you can turn the camera back on, turn your microphone on. But for the moment because so many people are participating and attending tonight. If you could do that.

5

00:00:48.780 --> 00:00:59.430

Chairman Cliff Thier: Turn your camera off, turn your microphone off, please. It will be an opportunity for all the gamepad. Let me just see what I have here.

6

00:01:00.990 --> 00:01:02.670

Chairman Cliff Thier: Okay, I think we're good.

7

00:01:04.680 --> 00:01:08.040

Chairman Cliff Thier: Yes. Everybody, everybody, turn the cameras and microphones off.

8

00:01:12.900 --> 00:01:13.500

Chairman Cliff Thier: All right.

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00:01:14.550 --> 00:01:15.480

Chairman Cliff Thier: To start

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00:01:16.860 --> 00:01:22.380

Chairman Cliff Thier: My name is Cliff fear and I am the chairman of the Avon England wetlands and water course Commission.

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00:01:23.400 --> 00:01:40.860

Chairman Cliff Thier: Thank you for joining us participate on the web in this public hearing and public meeting and we have a few notes for guidance on how the meeting will be conducted the meeting is being recorded and transcribed via zoom

12

00:01:41.100 --> 00:01:43.350

Chairman Cliff Thier: And both the transcript and the recording.

13

00:01:43.920 --> 00:01:45.420

Chairman Cliff Thier: Will be available. Following the

14

00:01:45.420 --> 00:01:46.620

Chairman Cliff Thier: Conclusion of the meeting.

15

00:01:47.850 --> 00:01:57.360

Chairman Cliff Thier: We recognize that this is because it's a virtual platform. It's an imperfect system. And so we ask everyone to be polite respectful and, above all, patient

16

00:01:58.080 --> 00:02:09.000

Chairman Cliff Thier: As we go through this process, we will do everything we can to ensure that everyone who wishes to view the proceedings or comment on the application is able to do so.

17

00:02:10.680 --> 00:02:22.290

Chairman Cliff Thier: For those of you using computers with zoom. You'll note that you have a few control buttons at the bottom of your screen microphone button mutes and unmute your audio.

18

00:02:23.160 --> 00:02:25.920

Chairman Cliff Thier: The camera button turns on and off your webcam.

19

00:02:27.900 --> 00:02:30.360

Chairman Cliff Thier: There is also an option for raising your hand.

20

00:02:31.050 --> 00:02:35.490

Chairman Cliff Thier: To be recognized. When we turn it over for public comment.

21

00:02:36.690 --> 00:02:37.980

Chairman Cliff Thier: I will be able to

22

00:02:39.090 --> 00:02:45.120

Chairman Cliff Thier: Identify each person who has a raised hand and I will recognize them, you know, in the order they put their hand up.

23

00:02:46.650 --> 00:02:52.950

Chairman Cliff Thier: will then ask members of the public to indicate if they wish to speak when the time comes by default.

24

00:02:53.430 --> 00:03:10.290

Chairman Cliff Thier: All non Commissioners will be muted, including participants on the phone, you will have the ability to unmute yourself when needed. After being authorized by me only anyone who creates a disruption during the meeting will be removed. Well, virtually removed.

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00:03:12.570 --> 00:03:20.850

Chairman Cliff Thier: We asked it all, the Commission is keep the cameras on during the meeting and to manage your own microphones, so that only one person is speaking at a time.

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00:03:22.080 --> 00:03:28.860

Chairman Cliff Thier: Again for the Commissioners, please keep your microphones muted unless you wish to speak or recognized by the chair.

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00:03:30.210 --> 00:03:47.880

Chairman Cliff Thier: We don't. That way we avoid any background sounds into interfering with the speaker for members of the public. We ask that you keep your cameras off unless and until you are providing testimony. This will help keep the presentation better organized and will save bandwidth

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00:03:49.620 --> 00:03:56.100

Chairman Cliff Thier: I asked that the applicants make the presentation which will include the sharing documents on the screen. During the presentation.

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00:03:57.030 --> 00:04:11.430

Chairman Cliff Thier: After the presentation, I will call upon the Commissioners to make comments or ask questions. Directing these through the chair and I will have the applicants respond after all Commissioners are done with questions, I will open up the floor to the public.

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00:04:12.900 --> 00:04:23.790

Chairman Cliff Thier: members of the public who wish to speak. Maybe the virtually raise their hands or put their names into the chat feature and be recognized. One at a time by myself.

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00:04:24.810 --> 00:04:33.030

Chairman Cliff Thier: You will have five minutes to speak, and we ask that you make all testimony relevant only to the elements of the application presented this evening.

32

00:04:34.290 --> 00:04:42.000

Chairman Cliff Thier: When you speak, you may unmute yourself. Turn on your camera if you wish. And we ask that you please state your name for the record.

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00:04:42.600 --> 00:04:53.280

Chairman Cliff Thier: When you have finished speaking please remove you mute yourself. I will run through a list of all the computer based participants who indicate they're interested in speaking

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00:04:54.270 --> 00:05:01.020

Chairman Cliff Thier: After all members of the public have finished, we will seek input from those participating by telephone

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00:05:01.950 --> 00:05:09.810

Chairman Cliff Thier: I will call out the last four digits of your phone number as a way of identifying you and will unmute the line. If you wish to speak.

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00:05:10.440 --> 00:05:27.360

Chairman Cliff Thier: Again, please state your name and you'll have five minutes to testify, after which we will remove you if we call your phone number and unmute your line, but you do not wish to testify, please either say pass or simply remain silent and we will move on.

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00:05:28.740 --> 00:05:41.190

Chairman Cliff Thier: After all, phone numbers are solicited I will make one last call for any member of the public wishing to speak at that time the applicant will be given an opportunity to respond to any elements of the public testimony.

38

00:05:43.470 --> 00:05:58.380

Chairman Cliff Thier: It is important to keep in mind that the Commission is only tasked with protecting the town's wetlands and watercourses concerns about other impacts that just traffic load or aesthetic harm must be shared with other town boards.

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00:06:00.840 --> 00:06:11.430

Chairman Cliff Thier: If anyone has any zoom technical issues, please put your comments or questions into the chat box, but please note that the chat box is not to be used for person to person conversation.

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00:06:11.910 --> 00:06:20.610

Chairman Cliff Thier: Or elements of testimony. This should just be used as a method for us to organize participation and to point out technical issues.

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00:06:22.320 --> 00:06:39.060

Chairman Cliff Thier: Any new misuse of the chat feature will result in that chat being turned off by the moderator. Again, we ask you for your patience and assure you we are doing our very best to make sure that the process is fair open and inclusive.

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00:06:40.230 --> 00:06:51.780

Chairman Cliff Thier: I just one more thing to add what the Commission is being asked to do tonight is not to approve any particular activity. This is a simple mapping question.

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00:06:52.830 --> 00:06:56.520

Chairman Cliff Thier: If the applicant proves that the current map is

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00:06:57.630 --> 00:07:04.770

Chairman Cliff Thier: Flawed or mistaken. We will take that into consideration, we will decide whether or not the applicant.

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00:07:05.850 --> 00:07:11.880

Chairman Cliff Thier: has met a standard burden of proof. Other issues such as global warming.

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00:07:13.740 --> 00:07:14.400

Chairman Cliff Thier: Effect.

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00:07:15.870 --> 00:07:16.740

Chairman Cliff Thier: On traffic.

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00:07:18.060 --> 00:07:28.560

Chairman Cliff Thier: Those is not something that we're authorized to consider. So again, this is not our typical meeting where an applicant brings us a proposal for

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00:07:29.610 --> 00:07:46.410

Chairman Cliff Thier: Construction within the wetlands or within the so called 100 foot upland review area. This is solely a mapping question is the current map wrong and if it is wrong. How should we connect corrected. That's our entire agenda for tonight.

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00:07:47.820 --> 00:07:52.260

Chairman Cliff Thier: So who will be speaking. First, on behalf of the applicant.

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00:07:55.020 --> 00:07:55.800

Chairman Cliff Thier: Miss Brooks.

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00:07:57.480 --> 00:07:59.040

Chairman Cliff Thier: You prove that good. Thank you.

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00:08:00.270 --> 00:08:12.480

Janet Brooks: Thank you. And for the record, and for those members of the public who were not here last time I'm attorney Janet Brooks and I'm speaking on behalf of the petitioners I'm opening this up.

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00:08:13.770 --> 00:08:29.400

Janet Brooks: I represent blue Fox LLC nod road properties, LLC and corner properties, LLC, the Petitioners here will make a brief presentation of regarding this the submissions that we made to the Commission approximately last week.

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00:08:29.430 --> 00:08:33.570

Janet Brooks: A week ago and will then move on.

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00:08:34.590 --> 00:08:45.030

Janet Brooks: After so after the public completed presentation. We are prepared to offer rebuttal of this evening. Thank you very much, Mr. Chairman.

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00:08:45.990 --> 00:08:54.450

Janet Brooks: And I would like to say why. Why are we here exactly as the chairman said it's a amendment proceeding.

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00:08:55.020 --> 00:09:08.640

Janet Brooks: It's listed in a different section of the weapons act and your regulations, then a permit processing. So all the factors which are valid considerations when a proposal to undertake activities.

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00:09:09.120 --> 00:09:34.050

Janet Brooks: Is before you are not relevant here they'll relevant at a different time in a different posture. So this is a science driven determination of wetlands boundaries and nothing is more clear that about that than your own regulations section 3.1 your definition of wetlands 2.1 point x

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00:09:35.280 --> 00:09:43.710

Janet Brooks: That the general map that's what your map is right now is not controlling the actual field conditions are. And we're here to amend

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00:09:44.100 --> 00:09:51.870

Janet Brooks: That we're petitioning to amend that map to make accurate wetlands delineation on the property.

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00:09:52.710 --> 00:09:59.220

Janet Brooks: And some of the members of the public asked why another application. Why are we doing this again.

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00:10:00.120 --> 00:10:07.170

Janet Brooks: And your regulations again help answer that and frame the question in Section 3.3

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00:10:07.740 --> 00:10:27.570

Janet Brooks: The Commission may amended some math, quote, as more accurate information becomes available. And that's what we are. We started the public hearing offering what those differences were what those new data points were and the new opinion of the town's consultant

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00:10:28.740 --> 00:10:30.420

Janet Brooks: Was to this, this

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00:10:32.040 --> 00:10:47.580

Janet Brooks: To this record, and I'll just briefly mentioned that the new data that we went into more detail. Last time involves 30 new 38 new shovel pits 12 new backhoe pits and the

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00:10:48.240 --> 00:11:01.800

Janet Brooks: opinion letter from the wetlands Commission's own consultant who is providing a neutral scientific opinion unrelated unsponsored by the petitioner here.

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00:11:02.520 --> 00:11:13.980

Janet Brooks: So, and just very briefly from that consultation came the quotes that this wetland delineation being proposed by the petitioners

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00:11:14.670 --> 00:11:29.280

Janet Brooks: Quote accurately and optimally represents wetlands boundaries and soil conditions observed during the field inspection. So now I'd like to turn this over to Bob Rousseau, the primary soil scientist for the petitioners

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00:11:30.300 --> 00:11:32.070

Janet Brooks: For his presentation. Thank you.

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00:11:32.970 --> 00:11:34.260

Michael Cegan: Actually Jana amadeu

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00:11:34.920 --> 00:11:35.430

Michael Cegan: I'm sorry.

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00:11:36.390 --> 00:11:39.270

Janet Brooks: I'm very sorry. Yes, I knew that. Yes, please.

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00:11:39.870 --> 00:11:40.590

Michael Cegan: In the

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00:11:40.980 --> 00:11:43.590

Janet Brooks: Planner from Richter and Seguin. Thank you.

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00:11:43.620 --> 00:11:56.790

Michael Cegan: Yes, as Jeff mentioned Mike Seguin from Richter and Seguin we are located in close by and Avon, Connecticut. We are the land planners landscape architects for the project.

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00:11:57.180 --> 00:12:10.200

Michael Cegan: I thought I would start out by just giving a very brief refresher, especially for those that may have not attended the previous public hearing for everyone's orientation, Gary. If you go to the next drawing

78

00:12:11.640 --> 00:12:28.980

Michael Cegan: The 230 point 230.4 acre parcel is which is the blue Fox wrong golf course is located at the corner of East main and nod road and extends quite a distance to the north, which is to the right on the drawing.

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00:12:29.940 --> 00:12:39.450

Michael Cegan: On nod road. It consists of three parcels number 65 number 117 and number 231 nod road.

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00:12:40.260 --> 00:12:48.990

Michael Cegan: As many, you know, the Farmington River runs through the middle of the golf course and along a portion of the western border that map a moment before the Commission.

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00:12:49.380 --> 00:12:59.610

Michael Cegan: Is for that portion of the golf course east of the river is shown in green on this map, which is approximately 163 acres next scary.

82

00:13:01.350 --> 00:13:07.710

Michael Cegan: This plan illustrates the limit of the wetlands as delineated in the field by the soil scientist.

83

00:13:08.340 --> 00:13:14.460

Michael Cegan: The blue colored areas are poorly drain soils very poorly drained soil and mortar courses in the brown colored

84

00:13:14.850 --> 00:13:28.860

Michael Cegan: Areas are the Louisville soils Bob Russa the soil scientist that completed the wetland mapping and provided review of his soils report and mapping last time we'll also have some additional comments following me next, Gary.

85

00:13:30.360 --> 00:13:45.630

Michael Cegan: Blue Fox has submitted this application because they are in the process of a comprehensive review of the golf course operations. However, they are no development plans are proposed wetland activities that are part of this proposal as Jennifer

86

00:13:46.050 --> 00:13:46.680

Michael Cegan: Mentioned

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00:13:46.710 --> 00:13:59.550

Michael Cegan: We are here specifically for our mapping them and not requesting approval for any regulated activities that future application would be required for approval of any proposed regulated activity. Next, Gary.

88

00:14:01.170 --> 00:14:12.180

Michael Cegan: At the previous public area Commission, Member asked for a map comparison of the sys wetteland as taken from the town wetlands and watercourses map with the field delineated wetlands.

89

00:14:13.200 --> 00:14:26.670

Michael Cegan: Per this this Map Amendment application, there is the following sequence of maps that you'll see respond to that request this first map shows the location of the site on the towns in the wetlands and watercourses map.

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00:14:27.180 --> 00:14:38.520

Michael Cegan: This mapping is done really at a growth scale. If you're familiar with, with the source of this mapping is created from a variety of sources, including the Hartford County's soil survey.

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00:14:39.060 --> 00:14:48.510

Michael Cegan: That mapping is general in nature and is why wetlands are required to be field delineated by the town wetlands regulations. Next, Gary.

92

00:14:49.980 --> 00:14:56.700

Michael Cegan: This map shows a wetlands for the town mapping, it's, it's now transferred from the previous map to our site it in a large scale.

93

00:14:57.180 --> 00:15:01.950

Michael Cegan: Again, this mapping is a general indicator in all my years of land planning.

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00:15:02.340 --> 00:15:12.000

Michael Cegan: Experience. I've never seen the wetland limits from a town map match the accuracy of mapping of the wetlands delineated in the field by soil scientists

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00:15:12.300 --> 00:15:20.310

Michael Cegan: Sometimes the lines are close, other times they're not so close. Often there are wetlands on town maps that cannot be confirmed by field data.

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00:15:20.730 --> 00:15:27.450

Michael Cegan: And often there are wetlands that are not shown on the town maps, but are identified in the field by soil scientist.

97

00:15:27.840 --> 00:15:43.770

Michael Cegan: We actually have both examples on our site and that will be clearly illustrated in the overlay comparison map, the Commission

requested again. This is precisely why the town wetland regulations require a field delineation and depiction on a map. Next.

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00:15:45.570 --> 00:16:04.080

Michael Cegan: This map shows the site's field delineated wetlands per the Map Amendment application or drawing 2.0 or they just showed you all the wetlands and water courses here are shown in green in a green color for easy comparison purposes with the town's wetland map next

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00:16:05.970 --> 00:16:10.140

Michael Cegan: This is the the graphic that we prepared at the request to the Commission.

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00:16:11.250 --> 00:16:23.670

Michael Cegan: And this this compares again the towns map with the field delineated wetlands for the Map Amendment application, the turquoise color represents

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00:16:24.360 --> 00:16:34.260

Michael Cegan: The overlap of the town wetlands mapping and the field delineated whelan's and you can see here, that's quite a large area on the right and upper right side.

102

00:16:35.220 --> 00:16:47.700

Michael Cegan: So there's a significant amount that the two two maps share in common. In addition, the blue areas are from the town wetland map only, but we're shown not to be wetlands based on field data.

103

00:16:48.180 --> 00:16:58.260

Michael Cegan: The green areas were from the field delineation mapping only and we're not on the town map and there's quite a few of those areas, a total about a

104

00:16:58.800 --> 00:17:08.970

Michael Cegan: Distinctly around the site and add up to quite a bit area again. This illustrates the very general nature in potential and accuracies of the town mapping

105

00:17:09.840 --> 00:17:14.550

Michael Cegan: One very important point from this graphic the graphics on this map.

106

00:17:15.000 --> 00:17:33.420

Michael Cegan: Do not result in the removal of any wetland resources. Instead they accurately identify the resources as required by the town

regulations and compare them to the more general mapping currently depicted on the talents mapping with that I was going to turn it over to Bob Roussel

107

00:17:37.140 --> 00:17:51.330

Bob Russo: Good evening. My name is Bob Russo. I'm a certified soil scientist with CLA engineers in Norwich Connecticut tonight. I'd like to just reiterate the purpose of the application then talk about the work that went into

108

00:17:52.680 --> 00:17:56.580

Bob Russo: The field delineated weapon that you see depicted on the graphic in front of you.

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00:17:57.720 --> 00:18:11.850

Bob Russo: Then talk about the town's retained soil scientists and their contribution to this map their comments and then to summarize the findings.

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00:18:12.780 --> 00:18:22.410

Bob Russo: As was stated previously, the purpose of this application is a Map Amendment. It's not a permit application there aren't regulated activities being proposed.

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00:18:23.490 --> 00:18:29.970

Bob Russo: I'd like to discuss the figure that's up on the screen now and just indicate that this figure shows

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00:18:30.660 --> 00:18:47.610

Bob Russo: All of the wetland boundaries that were filled delineated by myself that were checked by Michael Klein of Davison environmental and then that were further confirmed by the town's the Commission's consultants from the NCC DD

113

00:18:50.160 --> 00:18:58.590

Bob Russo: As you can see on this map. There are well over 100 data points indicated where soils were excavated and logged

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00:18:59.070 --> 00:19:07.440

Bob Russo: And used in the determination of the edge of the luteal and floodplain soils on the site. So the field work done for this is quite extensive.

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00:19:08.280 --> 00:19:22.890

Bob Russo: In addition to those points that you see on the map between Michael Klein of Davison and myself. There were hundreds of other auger holes. Doug to further refine the information that's presented on this map.

116

00:19:24.630 --> 00:19:38.460

Bob Russo: And what it showed us what this fieldwork showed us as the site is really a mixture, it's really a patchwork of soils that were disturbed and soils that were not disturbed. So this high level of investigation was well warranted.

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00:19:39.900 --> 00:19:49.620

Bob Russo: Before I go further in talking about this map, I just want to talk about the timeline of the investigations that were done out here.

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00:19:50.310 --> 00:19:59.430

Bob Russo: As Attorney Brooks indicated previously the map that's before the Commission now represents significantly more data.

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00:20:00.030 --> 00:20:09.690

Bob Russo: Behind it than maps that were previously presented to the Commission and that's important because in the spring of this year 2020

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00:20:10.500 --> 00:20:25.290

Bob Russo: A submitted was made to the condition for a Map Amendment. That's the middle was subsequently withdrawn and the map was revised those revisions were based on input from the towns.

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00:20:26.400 --> 00:20:30.930

Bob Russo: To soil scientists from NCC DD

122

00:20:32.040 --> 00:20:54.360

Bob Russo: Who actually went out assessed field conditions and on June 18 2020 were involved in a zoom conference with myself. Michael Klein of Davison john mccain hill town staff, where we went over their questions and comments on that delineation that was submitted this spring.

123

00:20:55.920 --> 00:21:05.220

Bob Russo: As a result, you have a new map a map that's different from what was submitted in this spring and the map that is before you is one

124

00:21:05.820 --> 00:21:21.960

Bob Russo: That represents the consensus of all four of those soil scientists, both the applicants soil scientist and the Commission sort of

scientists agree that this is a correct and accurate depiction of the weapons and water courses on this site.

125

00:21:25.530 --> 00:21:28.170

Bob Russo: This delineation, is based on

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00:21:29.460 --> 00:21:35.100

Bob Russo: site specific soil data collected and correlated. As you can see on the map.

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00:21:36.720 --> 00:21:42.000

Bob Russo: This is not the use of a surrogate of a FEMA map.

128

00:21:43.230 --> 00:21:45.240

Bob Russo: To try to define weapons.

129

00:21:47.040 --> 00:22:00.450

Bob Russo: What is done here is that an elevation is used as a factor in determining the limits of the soil on the site and elevation is a very appropriate.

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00:22:01.380 --> 00:22:10.440

Bob Russo: Tool to us in determining the limits of Louisville soil because a Louisville soils are deposited by water, which seeks a level elevation

131

00:22:11.310 --> 00:22:22.020

Bob Russo: So one of the tools in our kit as soil scientists for determining movil soils is elevation, it's properly used in a soil space delineation.

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00:22:22.800 --> 00:22:31.110

Bob Russo: And NCC DS letter explains that that is the case, as well, particularly in a site where certain areas are disturbed.

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00:22:31.680 --> 00:22:46.320

Bob Russo: Essentially we can map all of the areas that test positively as movil soils and make sure that we apply an elevation that encompasses all of those soils and all the disturbed soils as well that might not show movil characteristics.

134

00:22:49.830 --> 00:22:52.680

Bob Russo: So we've chosen a correct elevation

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00:22:53.760 --> 00:23:05.880

Bob Russo: The Commission's consultants agree that this elevation is appropriate on this map amendment is to clarify and make a precise boundary for presentation to the Commission.

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00:23:06.930 --> 00:23:12.540

Bob Russo: I would just further like to indicate that the town wide mapping that's available.

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00:23:13.920 --> 00:23:15.210

Bob Russo: Is not considered

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00:23:16.500 --> 00:23:23.310

Bob Russo: As an appropriate map for site specific work for applications.

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00:23:25.320 --> 00:23:40.260

Bob Russo: In Connecticut. We have a site specific soil based determination that's made by a soil scientist. And in fact, on the CT ICO website which is run by University of Connecticut Connecticut DP.

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00:23:41.160 --> 00:23:56.850

Bob Russo: There is a listing of use limitations for soil survey data and quoting directly from that website it says the Natural Resources Conservation Service will not perform any evaluations of these maps.

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00:23:57.540 --> 00:24:12.900

Bob Russo: For purposes related solely to state or local regulatory programs and further the use limitations section says this data set is not designed for us as a primary regulatory tool in permitting or citing decisions.

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00:24:13.860 --> 00:24:28.830

Bob Russo: I'm chairman fear indicated earlier, that we needed to show that the map the town wide map needed to be revised. I think that statement goes to this as well as the fact

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00:24:29.280 --> 00:24:43.470

Bob Russo: As Michael Seguin showed earlier that there are several areas of wetland on the site that we feel delineated that simply don't show up on the town wide map. I'm in conclusion. If I could have the next slide please carry

144

00:24:44.790 --> 00:24:50.220

Bob Russo: On, I just want to reiterate the findings of the NCC DD

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00:24:51.240 --> 00:24:53.910

Bob Russo: consultants that were retained by the Commission.

146

00:24:54.510 --> 00:25:03.390

Bob Russo: The first is that mapping alluvial soils with a mixture of undisturbed disturbed areas, it is standard practice to you to utilize elevation observations.

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00:25:03.720 --> 00:25:08.520

Bob Russo: Utilization of flood elevation is consistent with this practice and finally

148

00:25:09.060 --> 00:25:16.050

Bob Russo: The wetland delineation shown on the blue Fox run golf course wetland Map Amendment eight 720 submission

149

00:25:16.380 --> 00:25:29.700

Bob Russo: Accurately and optimally represents weapon boundaries and soil conditions observed during the field inspection and follows recommendations professional judgment and conclusions reached in the virtual meeting.

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00:25:31.050 --> 00:25:39.090

Bob Russo: That concludes my presentation for tonight, I would like to turn it over now to Michael Klein of Davison environmental. Thank you.

151

00:25:47.070 --> 00:25:50.610

Michael Klein: Mr. Chairman, members of the condition. My name is Michael Klein.

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00:25:52.530 --> 00:25:58.500

Michael Klein: Registered professional soil scientist and Certified Professional wetland scientist, I have

153

00:26:00.180 --> 00:26:16.350

Michael Klein: Been involved in this wetland delineation on this piece of property for approximately 25 years on this particular application I was retained to provide a peer review and a second opinion.

154

00:26:17.640 --> 00:26:19.350

Michael Klein: On Mr Russo's work.

155

00:26:20.880 --> 00:26:21.330

Michael Klein: On a

156

00:26:22.650 --> 00:26:26.880

Michael Klein: Highly disturbed site like this that's not an unusual circumstance to

157

00:26:28.020 --> 00:26:29.730

Michael Klein: To get a, get a second opinion.

158

00:26:30.870 --> 00:26:35.130

Michael Klein: What I'd like to do tonight is respond to

159

00:26:36.270 --> 00:26:48.390

Michael Klein: Some of the public comments that questions that have been been raised, and then later on this evening, both Mr Russo and myself will be providing some specific rebuttal.

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00:26:49.680 --> 00:26:50.280

Michael Klein: To the

161

00:26:51.510 --> 00:26:55.860

Michael Klein: Record that's been prepared by not road preservation, Inc.

162

00:26:57.630 --> 00:26:58.890

Michael Klein: So with respect to the

163

00:26:59.970 --> 00:27:08.280

Michael Klein: The specific questions and comments from the general public. There was a lengthy of submission by Francoise Miller.

164

00:27:09.630 --> 00:27:14.190

Michael Klein: And unfortunately, it contains a number of the inaccuracies.

165

00:27:15.750 --> 00:27:26.730

Michael Klein: She indicated that Connecticut incorporated soil testing into its England wetland laws as a direct decision to be more protective of Connecticut's wetlands and Federal law requires.

166

00:27:27.870 --> 00:27:42.690

Michael Klein: That's just, it's just not not correct. The Connecticut's regulation of wetlands predate the federal wetland process by many, many years the soil based definition of wetlands has not changed since

167

00:27:45.780 --> 00:27:54.000

Michael Klein: Was adopted in the early 1970s, and your Commission's definition of wetlands hasn't changed.

168

00:27:56.550 --> 00:28:10.710

Michael Klein: Miss Miller then goes on to note that there are alternate methods available of soil testing is not fully conclusive. And if there is a human altered or human transported soils present and she links to a

169

00:28:11.340 --> 00:28:25.200

Michael Klein: Site that's to a paper that's on the DPS website I'm we're well aware of that paper we used it to the extent that it was applicable we submitted it with our initial application.

170

00:28:27.660 --> 00:28:33.270

Michael Klein: The town's review consultants are also well aware of it. They both one is a

171

00:28:34.320 --> 00:28:46.080

Michael Klein: Former decades long Soil Conservation Service employee. The other is a present employee of the NRC as the successor agency to the Soil Conservation Service.

172

00:28:46.860 --> 00:29:02.670

Michael Klein: Who co authored that those agencies their agency co authored that document with the Connecticut d p. Um, it's appropriate under certain circumstances, their letter very specifically

173

00:29:03.870 --> 00:29:12.030

Michael Klein: Point that out. It applies to hydrate soils to wet wetlands. In this case, the

174

00:29:13.890 --> 00:29:34.380

Michael Klein: We use that methodology in those areas, but for the non Heidrick Louisville soils that methodology doesn't apply. However, I would state that the general concept behind that methodology which is to use the current conditions at the site and to evaluate them.

175

00:29:35.460 --> 00:29:40.380

Michael Klein: In the context of what you see on the ground at that moment, rather than being relying on

176

00:29:41.940 --> 00:29:54.630

Michael Klein: Indicators that might be a result of strictly human activity is the appropriate methodology. And that's precisely what what we did at the site. We use that a methodology where it was appropriate.

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00:29:56.070 --> 00:29:58.800

Michael Klein: The town's reviewers have have agreed with that.

178

00:30:00.000 --> 00:30:06.390

Michael Klein: Um, she points out that it takes 1000 years for soil to revert to its original state when it's, it has been altered.

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00:30:08.670 --> 00:30:10.590

Michael Klein: I don't know where that came from.

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00:30:11.670 --> 00:30:14.610

Michael Klein: I can tell you that as a soil scientist, there are

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00:30:15.840 --> 00:30:25.800

Michael Klein: We take whole courses semester long to semester long courses on soil Genesis. It's a very complex process. It's controlled by several independent variables.

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00:30:26.340 --> 00:30:43.950

Michael Klein: I don't know of any particular generations that can apply I can state for the record that I have personally observed wetland soil indicators that developed within just a few years after the hydrology of a soil has been altered so that it's now a wet, um,

183

00:30:45.390 --> 00:30:51.090

Michael Klein: Conversely, in areas that are drained that were wet and are now no longer wet.

184

00:30:53.160 --> 00:31:07.230

Michael Klein: It can take many, many years for those indicators to change the guidance document that was Miller quoted notes that using soil morphology alone on disturb sites can give you

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00:31:09.480 --> 00:31:10.980

Michael Klein: Incorrect conclusions.

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00:31:12.510 --> 00:31:22.290

Michael Klein: She points out that we didn't explain the extent of the soil alteration during the construction of the golf course. I think we've noted this many, many, many times.

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00:31:23.310 --> 00:31:36.060

Michael Klein: And fact the soils on the site and the hydrology on the site was altered many for many, many decades prior to the construction of the golf course and aerial photography confirms that

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00:31:37.050 --> 00:31:46.560

Michael Klein: She mentions that 300,000 yards of earthwork is required to build a golf course. I don't know whether or not that's an accurate modern average or not, but

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00:31:47.070 --> 00:32:00.660

Michael Klein: It really is is irrelevant, because in this particular case, the original course was built in around 1970 the newer holes were added in the early 2000s. I was

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00:32:02.610 --> 00:32:11.310

Michael Klein: Involved in the permitting of that expansion based on the way that golf course was constructed

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00:32:12.060 --> 00:32:25.980

Michael Klein: They based on comparing the existing conditions to prior conditions and my knowledge of the plans. I can state categorically that nowhere near 300,000 cubic yards of Earth was used to construct that golf course.

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00:32:28.710 --> 00:32:39.930

Michael Klein: She talks about whether that there's no way to know if we were testing the original soil or soil that has been impacted by the golf course construction. Well, the answer is, um,

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00:32:41.520 --> 00:32:49.980

Michael Klein: It really doesn't matter. Um, however, we have addressed this question in great detail the town's consultants have addressed this address this in great detail.

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00:32:51.630 --> 00:32:53.610

Michael Klein: And the basic

195

00:32:55.080 --> 00:33:03.300

Michael Klein: Situation here is that in a human altered landscape, the current conditions apply rather than something that might have been president decades ago in the past.

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00:33:04.410 --> 00:33:12.750

Michael Klein: She talks about wetlands can be restored to their natural state. Um, I have done a substantial amount of that work.

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00:33:14.160 --> 00:33:25.770

Michael Klein: The practice of wetland restoration refers to what I would call wet wetlands wetlands that have hydrate soils that have a quick soil moisture regimes swamps frogs marshes, etc.

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00:33:26.730 --> 00:33:32.520

Michael Klein: That's not applicable to the luteal soils on the site. They've never had an equal soil moisture regime.

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00:33:33.120 --> 00:33:40.770

Michael Klein: Restoring these oils to their original state would require removal of four major flood control dams upstream, which provide

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00:33:41.550 --> 00:33:56.880

Michael Klein: Flood control and water supply to hundreds of thousands of people, as well as the passage of hundreds of years Louisville soil Genesis process occurs on a much longer time frame then establishing a quick soil moisture conditions.

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00:33:58.110 --> 00:34:07.140

Michael Klein: As Miller states that the she cannot accept at face value, the consultants reports that the existing soils maps are not definitive

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00:34:09.030 --> 00:34:13.980

Michael Klein: I think Mr Russo's answered that in great detail. But again, I would just note that

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00:34:15.810 --> 00:34:30.000

Michael Klein: Our findings were carefully reviewed by the town's consulting soil scientist, they went out to the site they dug holes. They looked at all the test data that we presented and they've concluded that the map that was submitted is accurate.

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00:34:31.740 --> 00:34:40.410

Michael Klein: Mr. Miller. I'm also submitted some comments they primarily relate to flooding risk to residential properties as the chair has mentioned

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00:34:41.310 --> 00:34:54.630

Michael Klein: That's not directly relevant to a wetland boundary determination. However, just to ease the minds of those people who had that as a significant concern, I would point out that the town has long recognized

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00:34:55.650 --> 00:35:08.010

Michael Klein: That the Farmington River has presented a significant flood risk in the past and it requires it has very strict floodplain zoning regulations which

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00:35:09.360 --> 00:35:23.250

Michael Klein: Require all new human occupied structures to be elevated above the level of the 500 year storm the comparison that Mr. Miller makes to the situation, Houston is not particularly useful for a variety of reasons.

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00:35:24.810 --> 00:35:28.770

Michael Klein: But as the chair has mentioned, that's really not relevant to this discussion.

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00:35:29.850 --> 00:35:44.250

Michael Klein: Farmington River watershed Association also seem to be focused on protection of the 500 year flood plain or use of the 500 year flood plain to delineate wetlands and as the chair has mentioned that, as we've stated consistently.

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00:35:45.750 --> 00:35:57.150

Michael Klein: That's just not a relevant consideration, they could promote this I'm using language that's virtually identical to that which Dr. Clemens is used

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00:35:57.930 --> 00:36:08.820

Michael Klein: He's also clarified the fact that he wasn't talking about the wetland boundary. We appreciate that clarification. Apparently I wasn't the only person who was was confused. But again,

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00:36:09.360 --> 00:36:22.980

Michael Klein: To the FR why if they're there in attendance. The town regulations require protection of all structures to level one foot higher than the 500 year flood elevation

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00:36:25.170 --> 00:36:30.960

Michael Klein: Height Miss, miss it. Lewis talks about flooding on nod road again not particularly relevant

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00:36:32.460 --> 00:36:33.900

Michael Klein: She points out that the

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00:36:35.520 --> 00:36:45.690

Michael Klein: Soils consultant for nod road preservation suggests that our methodology was inadequate and there's no evidence that the town map is incorrect.

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00:36:50.010 --> 00:36:54.210

Michael Klein: The methodology is currently been verified by the town's reviewers.

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00:36:55.560 --> 00:37:05.670

Michael Klein: The evidence that the town map is incorrect can be can be seen by anyone who walks South off of Nod wrote about halfway up the property frontage

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00:37:06.180 --> 00:37:25.050

Michael Klein: They're going to end up in the middle of a pond, which is not shown on the on the town map. There are two major ponds. They're not shown on the town map. There's two smaller pond areas that are not shown on the town map the town map is not accurate. And as the town's regulations.

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00:37:26.340 --> 00:37:28.620

Michael Klein: State and the d p states.

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00:37:30.690 --> 00:37:40.980

Michael Klein: There's no reason to believe that they would be accurate. They weren't prepared at a scale and at a level of precision that would make them accurate on a site specific basis.

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00:37:43.080 --> 00:37:57.960

Michael Klein: We've done the necessary field work, and more importantly, probably for Miss Lewis and the Commission on the town's consulting soil scientists agree with us and do disagree with Mr dwelling on that the town map.

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00:38:00.150 --> 00:38:01.080

Michael Klein: Is not accurate.

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00:38:02.490 --> 00:38:04.440

Michael Klein: And I guess I'd also just

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00:38:05.970 --> 00:38:06.660

Michael Klein: Note that

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00:38:09.330 --> 00:38:20.010

Michael Klein: The regulator regulations in three or four different places the wetland regulations do not allow the use of the town map for permit applications they recognize that it's just a general

226

00:38:23.310 --> 00:38:31.530

Michael Klein: Is Louis sites, Dr. Clemens testimony about adverse impacts on native flora and fauna. Again, not particularly relevant to a

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00:38:32.460 --> 00:38:45.150

Michael Klein: Boundary determination, but I just would note that I'm not proposing any building or other alteration, but we expected all environmental impacts, including impacts on wetland soils wet flora and fauna.

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00:38:46.170 --> 00:38:52.140

Michael Klein: Water quality and so forth, will be considered carefully by the Avon land use agencies both this agency.

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00:38:53.160 --> 00:38:56.520

Michael Klein: The Planning and Zoning Commission in your town staff and engineering department.

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00:38:57.630 --> 00:39:02.070

Michael Klein: Has the at the time that any development application is submitted.

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00:39:04.830 --> 00:39:11.670

Michael Klein: Similarly, she believes that public safety and endangered species and community character are risk.

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00:39:13.800 --> 00:39:16.380

Michael Klein: Again, not particularly relevant, but those

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00:39:19.020 --> 00:39:23.130

Michael Klein: Those items are carefully considered in the in the towns.

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00:39:24.390 --> 00:39:26.640

Michael Klein: Regulation regulatory process.

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00:39:30.390 --> 00:39:31.410

Michael Klein: Mr Tedeschi

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00:39:34.590 --> 00:39:41.010

Michael Klein: Argues that or states that one can easily make the argument that the current level of identified wetlands is understated.

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00:39:42.660 --> 00:39:44.910

Michael Klein: Towns consulting soil scientist disagree.

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00:39:47.130 --> 00:39:49.050

Michael Klein: There's a Mr. Mr. Banner.

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00:39:50.580 --> 00:39:59.670

Michael Klein: On behalf of both himself, his wife, make a number of comments and ask a number of questions. Many of them are duplicative and I've already answered one that I thought was

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00:40:01.020 --> 00:40:01.710

Michael Klein: Interesting.

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00:40:02.760 --> 00:40:10.500

Michael Klein: Was perhaps relevant under, under different circumstances, was that they pointed out that weapons.

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00:40:11.610 --> 00:40:15.780

Michael Klein: Store organic carbon and can lessen the impact of flooding events.

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00:40:16.890 --> 00:40:30.720

Michael Klein: Those are general statements, but they don't apply to the wetlands at the site. Those organic matter is sequestered in poorly drained and very poorly drained soil is not the well drained soils and the areas in question.

244

00:40:32.580 --> 00:40:38.460

Michael Klein: This is an unusual cork and Connecticut slide I am not aware of any other place in the country where

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00:40:40.080 --> 00:40:46.440

Michael Klein: well drained soils are regulated as wetlands because of their location in the Louisville floodplain.

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00:40:47.460 --> 00:40:48.360

Michael Klein: And and finally

247

00:40:49.770 --> 00:40:50.910

Michael Klein: Miss Mr. Rothstein.

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00:40:53.070 --> 00:41:00.150

Michael Klein: notes that are suggests that the applicants intention of redesigning the golf course does not require a change in the wetland map.

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00:41:03.510 --> 00:41:04.080

Michael Klein: The

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00:41:05.250 --> 00:41:12.960

Michael Klein: First of all, wouldn't be prudent to design a redesign a golf course of design improvements without knowing exactly where the weapons are but finally

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00:41:13.560 --> 00:41:33.240

Michael Klein: I can say unequivocally that any reconfiguration of the golf course would require a wetland permit and the Commission's regulations require that field based delineation by a soil scientist be used on this was done in the past at the site on multiple occasions.

252

00:41:34.350 --> 00:41:55.470

Michael Klein: In the 1990s. In the early 2000s and again later maybe last five or six years. I'm involved in in some pond maintenance on the same methodologies have been applied. Every time at this site and got and it is necessary and appropriate to do so.

253

00:41:58.350 --> 00:42:00.720

Michael Klein: That's the extent of my

254

00:42:01.740 --> 00:42:05.220

Michael Klein: comments at this point in time, but I will have some additional comments.

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00:42:07.440 --> 00:42:10.230

Michael Klein: After the interviews and spoken or the

256

00:42:12.780 --> 00:42:17.130

Michael Klein: Suggested interview owners potential entrepreneurs, I guess that's the word I'm looking for.

257

00:42:19.440 --> 00:42:27.030

Janet Brooks: At this point we are finished with up for opening presentation this evening, and Mr. Chairman, if

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00:42:29.310 --> 00:42:34.500

Janet Brooks: You want to question our team that's fine, or how you want to proceed.

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00:42:36.090 --> 00:42:37.710

Michael Klein: I'll start with the members.

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00:42:37.710 --> 00:42:38.430

Chairman Cliff Thier: Of the Commission.

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00:42:39.900 --> 00:42:42.090

Chairman Cliff Thier: They have a Gen. We'll start with you.

262

00:42:49.410 --> 00:42:51.240

Commissioner Jed Usich: Get it up you there. Can you hear request.

263

00:42:51.690 --> 00:42:52.200

Yesterday,

264

00:42:53.700 --> 00:42:54.120

Commissioner Jed Usich: Subaru

265

00:42:55.440 --> 00:42:58.800

Commissioner Jed Usich: Good evening. Yeah, thanks for that update everyone appreciate that.

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00:43:01.500 --> 00:43:02.910

Commissioner Jed Usich: It strikes me that a

267

00:43:05.220 --> 00:43:08.100

Commissioner Jed Usich: Female flood boundaries tend to be increasing.

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00:43:09.780 --> 00:43:18.900

Commissioner Jed Usich: Over the years, never receiving if you will just given the state of things. I'm just curious. Maybe that's for for Michael

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00:43:21.690 --> 00:43:33.780

Commissioner Jed Usich: Client or can peek into maybe just comment on, you know, is that even potentially relevant, given the fact that there are, you know, significant dams upstream that really tend to control the flooding.

270

00:43:35.040 --> 00:43:45.600

Commissioner Jed Usich: To this, you know, wherever area, if you will. So I guess the question is, you know, you know, what are your thoughts on potential FEMA flood maps raising elevations.

271

00:43:47.220 --> 00:43:50.970

Commissioner Jed Usich: In the future, and doesn't even matter, given that the dams that are

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00:43:54.600 --> 00:43:55.110

Michael Klein: Given given

273

00:43:55.710 --> 00:43:59.070

Commissioner Jed Usich: Given that we're using get given that we're using elevation as a

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00:44:00.570 --> 00:44:05.280

Commissioner Jed Usich: You know, a means by which to, you know, create a weightless donation.

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00:44:07.500 --> 00:44:08.730

Michael Klein: Sherman chairman may respond

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00:44:09.150 --> 00:44:09.750

Absolutely.

277

00:44:10.770 --> 00:44:18.150

Michael Klein: I'm actually that's a very astute question, and this is a little bit of unique circumstance.

278

00:44:18.300 --> 00:44:18.690

Here.

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00:44:21.000 --> 00:44:21.480

Michael Klein: The

280

00:44:23.130 --> 00:44:24.210

Michael Klein: Flood control.

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00:44:26.160 --> 00:44:32.970

Michael Klein: Structures upstream. There's three major dams on the West Branch of the Farmington there's a major dam on the east branch of the Farmington that's not

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00:44:33.600 --> 00:44:48.480

Michael Klein: Particularly a actually there's two dams on the east branch them that's not particularly a flood control, but it does influence the hydrology downstream those structures were built in response to the

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00:44:49.050 --> 00:44:49.860

Michael Klein: floods of

284

00:44:52.440 --> 00:44:57.990

Michael Klein: They were designed to a higher standard than 100 year flood plain.

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00:44:59.520 --> 00:45:06.180

Michael Klein: They control flooding elevations downstream. So the, the concept that

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00:45:07.860 --> 00:45:14.640

Michael Klein: Climate change is going to affect those flood elevations is is not grounded in fact

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00:45:15.900 --> 00:45:26.700

Michael Klein: If you would want some more detailed discussion of that I'm Dave zajac our professional engineer can can provide you with more engineering details, but that is a

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00:45:28.500 --> 00:45:32.880

Michael Klein: An assumption that people have been operating under that's that's that.

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00:45:33.540 --> 00:45:41.100

Michael Klein: Is just incorrect at this location. It's a very unique circumstances may be the only one in the state where that occurs.

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00:45:45.840 --> 00:45:47.400

Commissioner Jed Usich: So Michael, if I'm hearing you correctly.

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00:45:49.590 --> 00:45:51.120

Commissioner Jed Usich: Any potential

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00:45:53.460 --> 00:45:55.920

Commissioner Jed Usich: Increase in the SEMA

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00:45:57.810 --> 00:46:08.640

Commissioner Jed Usich: Floods on that thing could be mitigated by the upstream dams, you're sitting inside, whether you believe that there's an increase coming in and elevations elevations from famous. Yeah.

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00:46:08.670 --> 00:46:10.350

Michael Klein: Not, not only could be, but would be

295

00:46:10.680 --> 00:46:12.630

Michael Klein: On they are the factors that control.

296

00:46:14.010 --> 00:46:17.460

Michael Klein: The elevation of the river and not

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00:46:18.780 --> 00:46:20.190

Michael Klein: Not the climate.

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00:46:24.930 --> 00:46:25.410

Commissioner Jed Usich: Right.

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00:46:29.460 --> 00:46:32.790

Commissioner Jed Usich: Yeah, that's all I had for now. Yeah. Thank you. Thank you. Appreciate it.

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00:46:34.890 --> 00:46:35.190

Commissioner Jed Usich: Was

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00:46:35.220 --> 00:46:36.270

Chairman Cliff Thier: Record raid. Sure.

302

00:46:37.380 --> 00:46:40.320

Chairman Cliff Thier: I'm sorry, Mr. Klein. Is this something else you wanted to

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00:46:40.620 --> 00:46:45.570

Chairman Cliff Thier: supplement your answer, no. Bob Breckinridge Europe next

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00:46:46.830 --> 00:46:47.460

Commissioner Robert Breckinridge: You hear me.

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00:46:48.060 --> 00:46:49.680

Commissioner Robert Breckinridge: Yes. Okay, great.

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00:46:50.730 --> 00:46:58.230

Commissioner Robert Breckinridge: Yeah, I'm going to carry out a little further with Michael in regard to this discussion about the dams up river.

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00:47:00.180 --> 00:47:01.260

My question is,

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00:47:03.000 --> 00:47:06.720

Commissioner Robert Breckinridge: To oil scientists ever take into consideration.

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00:47:07.560 --> 00:47:09.210

Commissioner Robert Breckinridge: What an area would look like.

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00:47:10.230 --> 00:47:21.090

Commissioner Robert Breckinridge: Before the dams were put in. Because, wouldn't that give them more accurate description of the soil types in that area. I know in New York. In New York, that's in there.

311

00:47:22.320 --> 00:47:37.980

Commissioner Robert Breckinridge: I believe it's in their guidelines for soil areas where it's very difficult because like a golf course. There's a lot of turnover in the soil and is that a clickable at all to connect law or this particular situation.

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00:47:39.600 --> 00:47:41.790

Commissioner Robert Breckinridge: Does that make sense thing.

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00:47:42.900 --> 00:47:44.970

Michael Klein: I understand what you're saying. I'm

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00:47:46.290 --> 00:47:51.780

Michael Klein: To the extent that the soils show were definitive

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00:47:52.680 --> 00:47:56.490

Michael Klein: In other words, if they in an undisturbed site but

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00:47:56.550 --> 00:48:04.860

Michael Klein: That which flood control structures had been installed upstream, I would be required to map the wetlands on the basis of what the soil showed me

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00:48:06.270 --> 00:48:09.540

Michael Klein: So, but in this particular case, the

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00:48:11.010 --> 00:48:13.560

Michael Klein: There are few there are not

319

00:48:13.950 --> 00:48:17.070

Michael Klein: Many locations where we have undisturbed soils.

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00:48:17.460 --> 00:48:19.620

Michael Klein: That we can look for evidence

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00:48:19.770 --> 00:48:23.640

Michael Klein: Of soil formation. So that's, um,

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00:48:24.600 --> 00:48:38.910

Commissioner Robert Breckinridge: That's kind of what I'm getting at is that, do you, do you ever look for a similar area on a river system say above the dams to use as a comparison to try and figure out what the soil types look like

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00:48:39.450 --> 00:48:49.680

Commissioner Robert Breckinridge: Before the dams were installed, because obviously the dams also have an effect on the soils and what's occurred in the area.

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00:48:50.370 --> 00:48:52.920

Commissioner Jed Usich: But maybe it's not even relevant as

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00:48:55.170 --> 00:48:56.040

Michael Klein: Well, the

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00:48:56.520 --> 00:48:59.280

Michael Klein: The effect of the dams, the dams were built.

327

00:49:02.550 --> 00:49:03.540

Michael Klein: In the 60s.

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00:49:05.010 --> 00:49:05.550

Michael Klein: So,

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00:49:06.420 --> 00:49:06.990

Michael Klein: That was

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00:49:08.820 --> 00:49:15.330

Michael Klein: 60 years ago I'm Louisville soil Genesis takes much longer than that and the

331

00:49:18.420 --> 00:49:22.740

Michael Klein: Louisville characteristics wouldn't disappear in 60 years so that

332

00:49:26.070 --> 00:49:32.310

Michael Klein: That's really the construction of the dams did not affect the delineation.

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00:49:35.820 --> 00:49:45.060

Commissioner Robert Breckinridge: Okay, I understand that. But the construction dams say these areas were constant flooding prior to the dams being there does change the soil type

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00:49:46.110 --> 00:49:48.270

Commissioner Robert Breckinridge: In a way that also building a golf course.

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00:49:49.410 --> 00:49:56.070

Commissioner Robert Breckinridge: And and my not allow us to really tell if the were true Luteal soils president

336

00:49:57.570 --> 00:49:59.670

Commissioner Robert Breckinridge: And I know you've made attempts to

337

00:49:59.700 --> 00:50:03.180

Commissioner Robert Breckinridge: Dig pretty deep. And it sounds like you're getting down to maybe those

338

00:50:03.780 --> 00:50:05.310

Commissioner Jed Usich: Areas and

339

00:50:05.370 --> 00:50:09.000

Commissioner Robert Breckinridge: And I question that last time, and I believe someone

340

00:50:10.470 --> 00:50:19.140

Commissioner Robert Breckinridge: Said you were able to get down to undisturbed soils are present prior to the golf course or and I incorrect and

341

00:50:20.460 --> 00:50:20.520

Commissioner Robert Breckinridge: You

342

00:50:21.090 --> 00:50:31.920

Michael Klein: Know we we were able to do that, that we excavated these tests gets down to about six or eight feet and we didn't go for example into one into the berms or the greens that are push up

343

00:50:32.220 --> 00:50:40.680

Michael Klein: On this site that's one of the reasons why there really isn't that much earthwork on this site compared with a conventional golf course when this course was built.

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00:50:41.130 --> 00:50:52.680

Michael Klein: On earth moving equipment was not as efficient as it is now, and but just weren't as big and the golf course architecture design is course else, of course, and has designed several

345

00:50:53.610 --> 00:51:09.000

Michael Klein: Designed several courses along the Farmington River and and other places. And what he would typically do is use the the land as it was mostly on presented and build what we call push up greens and push up tease because those are the

346

00:51:11.490 --> 00:51:16.170

Michael Klein: features on the golf course that are the most expensive to maintain and replace if they get flooded.

347

00:51:17.130 --> 00:51:31.650

Michael Klein: So we didn't excavate in the areas of the Greens are the teas or the mountains or the golf course features, but um we did by using a heavy machinery, rather than just the normal tools that a soil scientist could use

348

00:51:32.670 --> 00:51:47.220

Michael Klein: We did go down to a depth, where we where we encountered original materials and we tried to we tried to focus our work to the greatest extent possible in the areas on that hadn't been so heavily affected by a golf course construction.

349

00:51:48.480 --> 00:51:52.860

Bob Russo: Permit there. This is Barbara. So if I could take a minute to add to Mr fines comments.

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00:51:53.730 --> 00:52:05.940

Bob Russo: Sure, um, regarding the Commissioners question. I just want to, I think reiterate what Michael Klein just said, and that is that the Louisville soil characteristics.

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00:52:07.050 --> 00:52:10.980

Bob Russo: That were generated on the site before the dams were built.

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00:52:12.090 --> 00:52:24.930

Bob Russo: would remain for substantial amount of time even to present day unless disturbed for the golf course and what we were able to do is in certain places.

353

00:52:25.740 --> 00:52:34.770

Bob Russo: Map those undisturbed alluvial soils that were generated before the dams were put in place and use that the onsite data.

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00:52:35.160 --> 00:52:46.590

Bob Russo: As a basis for determining the whole boundary of the Louisville soils. So we were in fact using the luteal soil boundary from before the dams were built throughout the site.

355

00:52:48.060 --> 00:52:50.850

Commissioner Robert Breckinridge: Perfect that clarifies it. Thank you.

356

00:52:52.320 --> 00:52:52.770

Chairman Cliff Thier: Michael

357

00:52:59.100 --> 00:53:01.860

Chairman Cliff Thier: Michael, you have to turn your, you have to unmute you Mike.

358

00:53:02.220 --> 00:53:14.610

Commissioner Michael R Beauchamp: Yeah, I gotta, you can hear me fine cliff, I think, so far. This presentation is but very thorough. Ah, I don't really have any comments or questions now. I may have some later. Thank you.

359

00:53:15.960 --> 00:53:19.950

Chairman Cliff Thier: Alrighty. I JOHN Is there anything you wish to

360

00:53:21.570 --> 00:53:22.590

Chairman Cliff Thier: State at this point.

361

00:53:26.190 --> 00:53:27.000

John McCahill- Town Staff: Are there here.

362

00:53:27.720 --> 00:53:29.160

Chairman Cliff Thier: And now we can't. Yes, so

363

00:53:29.220 --> 00:53:42.510

John McCahill- Town Staff: Just for the record, I wanted to be clear about the fact that I'm just in the sense of building the record, I want to be clear about the fact that the town staff has been very diligent about posting everything on the town's website. So the current

364

00:53:44.190 --> 00:53:52.650

John McCahill- Town Staff: Application and relevant materials are everything that was posted on the website as of about two o'clock this afternoon. It's a long list. I'm not going to read it.

365

00:53:53.070 --> 00:54:00.180

John McCahill- Town Staff: But the only correspondence that came in after we were able to do our final posting this afternoon with some correspondence. I'm just going to

366

00:54:00.510 --> 00:54:06.570

John McCahill- Town Staff: summarize it for the record. So we have a complete record of everything that was submitted up to date and it's correspondence from Christopher Jackson.

367

00:54:07.770 --> 00:54:20.280

John McCahill- Town Staff: From 230 to nod road and it says, Dear members of the Commission, I am writing to ask that you reject application six 768 which intends to amend the wetland map for this parcel of land.

368

00:54:21.180 --> 00:54:31.410

John McCahill- Town Staff: We have lived on nod road since 2011 and have witnessed the repeated flooding that occurs on that road. The farmer to river has a habit of breaching its banks and flooding the surrounding area.

369

00:54:31.950 --> 00:54:41.070

John McCahill- Town Staff: The photo below was taken from our front porch on the east side of not road looking across to the west side in August 2011 after the tropical storm Irene.

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00:54:41.610 --> 00:54:49.500

John McCahill- Town Staff: And there's a picture that's part of that, it says the satellite image below aligns landmarks with the flood photo to demonstrate

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00:54:49.980 --> 00:55:06.900

John McCahill- Town Staff: The reach of the floodwaters. And the farmer to river crusted at 16.98 feet during the August 2011 flood and again he showed some pictures and the farmer to river has experienced numerous flood events in the past, and we could expect to see an increasing number in the future.

372

00:55:08.070 --> 00:55:15.030

John McCahill- Town Staff: The data below is obtained from the National Weather Service service at water weather.gov and then he provides some data.

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00:55:15.930 --> 00:55:21.570

John McCahill- Town Staff: And the use of the soil samples to determine the wetland boundaries may apply well to undisturbed Earth.

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00:55:22.200 --> 00:55:30.990

John McCahill- Town Staff: But in the case of the this application. The ground has been extensively excavated and manipulated the wetlands Commission needs to consider the history of this area.

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00:55:31.440 --> 00:55:45.450

John McCahill- Town Staff: And what is likely to be more turbulent future due to the climate change. I just want to make sure that we build a

consistent record and know what's part of the application up to date. So that would be the only additional corresponds that we have so far.

376

00:55:47.340 --> 00:55:48.060

Chairman Cliff Thier: THANK YOU, JOHN

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00:55:49.980 --> 00:56:01.470

Chairman Cliff Thier: Before I open this up for comments from the public. Does anyone representing the applicant have anything they want to add or clarify.

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00:56:04.890 --> 00:56:05.910

Chairman Cliff Thier: Okay, that's not

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00:56:07.980 --> 00:56:17.490

Chairman Cliff Thier: And john. Can you just leave you. Some people may not know how how they can raise their hand if they wish to be recognized.

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00:56:18.960 --> 00:56:30.810

John McCahill- Town Staff: So if you were to click, click on the participant list, which is at the bottom of most, most people screens that will bring you to a feature and a box. And on the right hand side, it should say raise hand.

381

00:56:32.160 --> 00:56:45.840

John McCahill- Town Staff: Mike d'amato. I don't know if you have any other additional clarification, you could offer, but I think it's about that simple. And we had posted on the website a diagram that would also show you that physically. So if anybody has any questions.

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00:56:46.950 --> 00:56:54.930

John McCahill- Town Staff: We'll try to address them. And I guess you could enter something into the chat box if we need to guide you through the hands ran right hand raising feature.

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00:56:56.160 --> 00:56:58.590

Chairman Cliff Thier: All right, I am scrolling through that.

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00:57:00.000 --> 00:57:12.510

Chairman Cliff Thier: That list and I am looking for raised hands. I do see one, Mr Brian Smith, if you would turn on your camera and turn on your microphone. Thank you.

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00:57:13.470 --> 00:57:14.790

Brian R. Smith: Yes. Can you hear me, Mr. Chairman.

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00:57:15.120 --> 00:57:16.860

Chairman Cliff Thier: Yes, we, I guess we can't thank you

387

00:57:17.220 --> 00:57:26.130

Brian R. Smith: Very good. Yes, it is. This is Brian Smith. I'm an attorney with Robinson and call him. We are here representing not road preservation, Inc.

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00:57:27.570 --> 00:57:35.550

Brian R. Smith: And we have several couple of witnesses, but we also would like at the outset to clarify.

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00:57:36.060 --> 00:57:45.300

Brian R. Smith: Where we stand with respect to our intervention petition, because there was correspondence from attorney Brooks, suggesting that we should not be allowed to have it, then we

390

00:57:46.140 --> 00:57:58.650

Brian R. Smith: submitted a response. And then the, the town attorney gave her her recommendation today. Earlier today, so that we would like to be heard on that point.

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00:58:00.930 --> 00:58:02.160

Brian R. Smith: Unless the Commission.

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00:58:04.140 --> 00:58:13.410

Brian R. Smith: Do that first because it has a difference as to how this proceeding with unfold for what rights, we have our don't interview, the Commission.

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00:58:14.880 --> 00:58:15.660

Chairman Cliff Thier: I'm going to

394

00:58:16.770 --> 00:58:19.620

Chairman Cliff Thier: Give you that opportunity right now. Mr. Smith.

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00:58:21.030 --> 00:58:26.130

Brian R. Smith: Well, thank you, thank you. What I would like to do is to actually turn over

396

00:58:27.630 --> 00:58:39.150

Brian R. Smith: The initial part of that presentation to my, my co counsel Evan semen home address, the Commission, I hope he's raising his hand. There he goes. So

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00:58:39.480 --> 00:58:42.750

Chairman Cliff Thier: Mr. Simon, we can see you, but you have to turn your mic on. Thank you.

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00:58:44.820 --> 00:58:46.620

Evan J. Seeman: Good evening. Can you hear me all right.

399

00:58:46.860 --> 00:58:47.610

Chairman Cliff Thier: Yes, we can.

400

00:58:48.000 --> 00:58:59.070

Evan J. Seeman: Great, thank you for the record, Evan seaman Robinson and Cole, on behalf of not road preservation, Inc. And I'd like to take a few minutes just to describe why

401

00:59:00.000 --> 00:59:15.600

Evan J. Seeman: The Commission should grant our client not wrote preservation intervene or status in this proceeding. And I think the best place to begin is just very briefly discussing the application that was filed in

402

00:59:17.490 --> 00:59:27.870

Evan J. Seeman: By these applicants for this property, as the Commission is well aware that application was substantially similar to the one that's before you this evening.

403

00:59:28.620 --> 00:59:46.170

Evan J. Seeman: That application also proposed modifying the wetlands map as applied to these properties it it was submitted by the same applicants and also proposed using the same methodology that is the female 100 year boundary line.

404

00:59:47.190 --> 00:59:48.660

Evan J. Seeman: And that proceeding, the Commission.

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00:59:49.710 --> 00:59:57.720

Evan J. Seeman: Granted, not roads intervention petition it recognized its right to participate as an entertainer and intervening party.

406

00:59:58.590 --> 01:00:11.940

Evan J. Seeman: And it did so over the objection of the applicants. That's the application that they submitted to modify the weapons map in that proceeding was not conduct because it was simply a weapons Map Amendment

407

01:00:12.690 --> 01:00:26.790

Evan J. Seeman: So, the Commission rejected that position and granted an RPG not read preservation intervene or status, the Commission then went on to actually denied the application, the wetlands application that was before it in

408

01:00:28.530 --> 01:00:30.960

Evan J. Seeman: And the applicants took an appeal to the Superior Court

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01:00:32.940 --> 01:00:44.310

Evan J. Seeman: In the Superior Court this very issue is considered the applicants again challenged nod roads ability to intervene in this proceeding under the intervention statute.

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01:00:46.050 --> 01:00:52.710

Evan J. Seeman: Of the general statutes and again argued that a wetlands Map Amendment is not concepts under that statute.

411

01:00:54.090 --> 01:01:11.250

Evan J. Seeman: The superior court rejected that argument. They concluded that a wetlands Map Amendment is conduct and that not road preservation NX participation as an intervening party was appropriate any weapons Map Amendment application.

412

01:01:12.630 --> 01:01:24.390

Evan J. Seeman: So let's fast forward about one and a half years to where we are tonight. We have another application. The one pending before you. It's very similar to the one that this Commission considered in

413

01:01:25.560 --> 01:01:29.940

Evan J. Seeman: Same property. Use of the female 100 year boundary line to

414

01:01:30.960 --> 01:01:34.110

Evan J. Seeman: Read delineate wetlands in the same applicants.

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01:01:35.190 --> 01:01:45.000

Evan J. Seeman: And nod road has again filed a verified petition for intervention, it's it's similar to the one that it filed in

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01:01:46.080 --> 01:01:55.200

Evan J. Seeman: In which was approved by the application. Sorry, which was approved by the Commission, given the substantial similarities between the two applications.

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01:01:56.730 --> 01:02:05.700

Evan J. Seeman: So the applicants lawyer again repeats basically the exact same arguments that were made and considered by the Commission and

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01:02:07.290 --> 01:02:15.630

Evan J. Seeman: And we're also considered by the Superior Court in in the appeal. There are no new cases cited no new arguments made

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01:02:16.560 --> 01:02:34.320

Evan J. Seeman: If the Commission granted not road preservation intervene or status in 2019, then it should certainly do so again. Now, especially with the benefit of a court decision on this very property for an application that is almost identical.

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01:02:35.490 --> 01:02:41.100

Evan J. Seeman: There's been no change in circumstances that should cause the condition to change its previous decision.

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01:02:42.690 --> 01:02:56.220

Evan J. Seeman: So the last point I want to make before turning it back to attorney Smith is just a couple points about the memorandum that was provided today by the town attorney.

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01:02:56.730 --> 01:03:13.860

Evan J. Seeman: And we were a little disappointed in the mid memorandum for two reasons. And this memorandum is basically an update to the to the memorandum that was provided to the Commission in the 2019 proceeding regarding this property.

423

01:03:15.180 --> 01:03:23.100

Evan J. Seeman: And in the 2019 memorandum, I'd like to quote from the conclusion section and this

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01:03:24.510 --> 01:03:34.770

Evan J. Seeman: Memorandum from the town attorney is a part of the record. It's posted to the town's website and its conclusion section. The following quote appears

425

01:03:35.640 --> 01:03:46.080

Evan J. Seeman: Quote, because the law is unsettled. We recommend that the Commission recognize and RP not road preservation based upon it's verified petition.

426

01:03:46.500 --> 01:04:07.470

Evan J. Seeman: And allow it to participate and present evidence and supportive its claims. So in 2019 the recommendation was to allow nod road preservation and to permit preservation and to be granted intervening party status in the memorandum from the town attorney that was submitted.

427

01:04:09.060 --> 01:04:15.390

Evan J. Seeman: Earlier today, there is no similar recommendation there is no recommendation that the Commission.

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01:04:16.650 --> 01:04:20.880

Evan J. Seeman: Grant not road preservation, Inc. Enter intervene or status.

429

01:04:21.540 --> 01:04:33.060

Evan J. Seeman: So what's changed. What's changed between now and then. Well, well, nothing has changed except that there's a superior court decision that actually supports the position of an odd road and actually found

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01:04:33.660 --> 01:04:39.990

Evan J. Seeman: That not road preservation and CAD properly intervenes, or was a proper intervene or under

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01:04:41.490 --> 01:04:43.590

Evan J. Seeman: In a wetlands map amended proceeding.

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01:04:44.910 --> 01:04:54.240

Evan J. Seeman: The second point that I want and final point that I want to make about that town attorney memorandum is that in the conclusion section. There's also reference to

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01:04:55.350 --> 01:05:06.330

Evan J. Seeman: Not road preservation. Having the ability to file an appeal, having the automatic right to file an appeal if it's granted intervening party status.

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01:05:07.110 --> 01:05:17.610

Evan J. Seeman: That is it an accurate assessment of the law. We agree that's correct. But, but it should have no bearing on the Commission's decision as to whether or not road preservation. He

435

01:05:17.970 --> 01:05:28.530

Evan J. Seeman: Should be permitted to intervene in this proceeding, whether it may or may not file up an appeal is entirely irrelevant what's relevant is that the Commission and

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01:05:30.420 --> 01:05:31.230

Evan J. Seeman: Granted, not

437

01:05:32.640 --> 01:05:41.790

Evan J. Seeman: Intervening party status for an application, very similar to the one presently before you, but also relevant is that the Superior Court

438

01:05:42.450 --> 01:05:57.210

Evan J. Seeman: Similarly, found that nod room preservation is can intervene any proceeding on this very property involving a proposed weapons map a minute. So, the Commission should be guided by its earlier decision in

439

01:05:58.620 --> 01:06:11.310

Evan J. Seeman: And by the Superior Court decision and it should grant not road preservation intervening party status. Thank you for the time to address this issue to the Commission.

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01:06:16.920 --> 01:06:17.430

Brian R. Smith: Yeah, so

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01:06:17.970 --> 01:06:21.810

Chairman Cliff Thier: All right, Miss works. Do you have a response to that.

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01:06:24.270 --> 01:06:30.300

Janet Brooks: One of the questions I wanted to know is whether attorney Olsen actually wants to take

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01:06:32.640 --> 01:06:42.930

Janet Brooks: An opportunity to defend her changing position because I have a few things to say. But I think my comments might be more appropriate after town councils.

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01:06:45.930 --> 01:06:47.490

Kari Olson: Here, if you'd like to hear from me.

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01:06:48.450 --> 01:06:50.100

Chairman Cliff Thier: Yeah, please. Please go ahead.

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01:06:50.520 --> 01:07:07.470

Kari Olson: Okay, thank you. So, so at the end of the day, there really has been no changing in position at all times. The decision has been the Commission's um I think what was illuminated through the last process was the notion

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01:07:09.150 --> 01:07:22.470

Kari Olson: Excuse me I'm even if you did not believe that the interviewers had standing or that they had provided sufficient evidence

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01:07:22.920 --> 01:07:30.540

Kari Olson: To prove their burden of establishing that there's a likelihood of a negative impact impact to a wetland.

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01:07:31.800 --> 01:07:51.180

Kari Olson: That it was made very clear through the appellate process that even if the Commission were to ultimately find that intervention was not appropriate, it would automatically give them standing to, to, to, uh, to challenge. And as you know,

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01:07:52.260 --> 01:07:57.210

Kari Olson: When it came to the appeal of the last denial. I'm

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01:07:58.260 --> 01:08:15.870

Kari Olson: Standing was a big issue before the court and again what I say to you is ultimately it is your decision. It has always been your decision. I would agree that in the normal, normal context that

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01:08:17.460 --> 01:08:29.610

Kari Olson: Whenever an intervention petition is provided to you. You have to establish based on statutes, whether it meets your jurisdictional venue.

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01:08:30.780 --> 01:08:44.220

Kari Olson: And you do need to be aware of the fact that I am in disagreement with Judge burgers position on whether it's on a Map Amendment constitutes conduct.

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01:08:45.240 --> 01:08:56.850

Kari Olson: Under the statutes for which and intervene or can establish a likelihood of a impact to wetlands under the circumstances presented here.

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01:08:58.830 --> 01:09:08.610

Kari Olson: And, but, again, ultimately the decision is for the Commission's to make. Um, and so there really hasn't been a change in position, if you will.

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01:09:09.390 --> 01:09:20.880

Kari Olson: I did a state. The first go around that, you know, maybe worthwhile to allow them to go forward and present their case as to why they think that there's a substantial likelihood

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01:09:21.390 --> 01:09:33.420

Kari Olson: My understanding of the president petition is that it's no different than the first one as Attorney seaman has presented to the Commission this evening, and therefore it

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01:09:34.410 --> 01:09:44.070

Kari Olson: To my knowledge is based upon the notion that a change and a wetlands map constitutes a regulated activity or conduct under the

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01:09:45.450 --> 01:10:06.330

Kari Olson: Under the Act. And that's where we park company. Um, I am not going to change my position on that apps and appellate court decision to the contrary, I do not understand how delineating a map where you have expert.

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01:10:07.380 --> 01:10:16.350

Kari Olson: Input on the fact that there are no wetlands located within the delineated area, how the Commission can determine

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01:10:16.890 --> 01:10:23.910

Kari Olson: That they have jurisdiction over that and how that can negatively impact those wellens or watercourses

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01:10:24.840 --> 01:10:38.400

Kari Olson: Again, it's their burden and if the Commission finds that there is evidence that what's being proposed implicates impacts to the wetlands and watercourses

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01:10:38.910 --> 01:10:46.530

Kari Olson: Then that is their ultimate decision that is not for me to make, but based on the law and the statutes.

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01:10:47.040 --> 01:11:06.660

Kari Olson: As I understand them again. I disagree with Judge burgers analysis had any weapons delineation is necessarily conduct that affects well into watercourses much less that is conduct that negatively impacts well as and watercourses and I think

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01:11:07.680 --> 01:11:09.990

Kari Olson: We're gonna have to get an appellate court decision on that.

466

01:11:11.760 --> 01:11:13.470

Kari Olson: And if you have questions, please let me know.

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01:11:15.240 --> 01:11:15.750

Chairman Cliff Thier: Well,

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01:11:17.040 --> 01:11:20.280

Chairman Cliff Thier: I think we should make it. Yes, please, Miss works.

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01:11:20.520 --> 01:11:24.990

Janet Brooks: I just, I just wanted to follow up on attorney Olsen's comments so

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01:11:26.010 --> 01:11:34.740

Janet Brooks: I think what sometimes confuses people is that the word conduct sounds like, well, it's, it's an action that the agency's engaged in, and certainly

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01:11:35.370 --> 01:11:48.510

Janet Brooks: You know, changing the map is an action but but conduct under the Environmental Protection Act means conduct that is reasonably likely to cause unreasonable.

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01:11:49.860 --> 01:12:00.060

Janet Brooks: Either pollution impairment or destruction of let's say your wetlands and i i i just can't envision in any way how

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01:12:00.570 --> 01:12:14.160

Janet Brooks: Either old technology, the placing of a pen line on a paper or new technology, the movement of a computer line how that that decision a vote on that.

474

01:12:14.640 --> 01:12:34.080

Janet Brooks: Will likely cause unreasonable pollution impairment and destruction, because there's no approval associated with it to undertake any regulated activities so regular activities. Any regulated activity. It seems me to me as a pro is appropriate.

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01:12:35.100 --> 01:12:39.750

Janet Brooks: Moment for intervention, but something that is

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01:12:41.640 --> 01:12:52.500

Janet Brooks: Like a zone change, which is what the Connecticut Supreme Court case was about in the palm view case or in the wetlands context like a wetlands boundary change which does not

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01:12:53.400 --> 01:13:07.320

Janet Brooks: allow any activity to occur. I don't see how they'll ever be able to establish, you know, under any set of facts, how the placement of ink or the placement of a computer line causes pollution.

478

01:13:09.390 --> 01:13:26.520

Kari Olson: And I can, I would concur with attorney box on that point. And that's, that's where they're sticking point is, you know, regulated activities are actually defined both under your regulations and in the general statutes and they do not include the delineation of a wild lands math.

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01:13:27.960 --> 01:13:42.570

Kari Olson: So again I part company which is Berger, who I have the most utmost respect for and why I've been practicing in front of for more than 20 years but I disagree with his position on that.

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01:13:43.830 --> 01:13:51.870

Kari Olson: However, that's a legal opinion and the ultimate decision as to whether you should allow intervention.

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01:13:52.350 --> 01:14:10.020

Kari Olson: And allow a nod road protection to have intervened and party status and the right to appeal is ultimately the Commission's and i again i believe that ultimately this decision is going to have to go do an appellate court.

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01:14:11.490 --> 01:14:27.450

Kari Olson: As to whether this does constitute conduct. But notwithstanding, my legal opinion which I was asked to provide the ultimate decision on whether to allow intervention is yours. And that's

the ultimate conclusion that was made in both of my memory and I both from

483

01:14:29.070 --> 01:14:30.720

Kari Olson: And the one that was provided today.

484

01:14:32.250 --> 01:14:32.700

Chairman Cliff Thier: Thank you.

485

01:14:34.200 --> 01:14:34.800

Chairman Cliff Thier: We can

486

01:14:37.350 --> 01:14:49.770

Chairman Cliff Thier: I'll just share my thinking about this, we have four members of the Commission here today and I am concerned that if we come up. I don't want to come up with any two to two votes.

487

01:14:50.310 --> 01:15:05.370

Chairman Cliff Thier: Certainly, we don't have an odd number we barely have a quorum. JOHN If we do not reach that if we do not take a vote today on either of those. What is our option for a follow up meeting for vote.

488

01:15:07.920 --> 01:15:09.420

Chairman Cliff Thier: Please turn on your microphone.

489

01:15:09.480 --> 01:15:29.820

John McCahill- Town Staff: Oh, sorry. So, so if we were to close the public hearing, we would have 35 days to render a decision. And that decision could take into account both a vote on the status of the petition for intervention and it could also take into account a vote on the pending application.

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01:15:30.840 --> 01:15:38.640

John McCahill- Town Staff: And or we could continue the public hearing. If we have a need to do so at the end of this evening. So we have options available to us.

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01:15:39.090 --> 01:15:40.200

Chairman Cliff Thier: THANK YOU, JOHN so

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01:15:42.570 --> 01:15:52.350

Chairman Cliff Thier: I go to the other Commissioners agree with me that it would be best to postpone any boats until we have an odd number of maybe a quorum.

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01:15:58.620 --> 01:15:59.220

Commissioner Jed Usich: Choose me

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01:16:00.480 --> 01:16:03.960

Commissioner Jed Usich: What happens if there's a two two tie. Well, that's why I don't want to have a

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01:16:03.960 --> 01:16:06.990

Chairman Cliff Thier: vote today. I think we have a good shot.

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01:16:07.410 --> 01:16:09.840

Commissioner Jed Usich: I'm just curious. I'm curious as to what what

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01:16:09.870 --> 01:16:10.800

Commissioner Jed Usich: It does not have

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01:16:12.300 --> 01:16:13.140

Chairman Cliff Thier: Any kind of

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01:16:13.560 --> 01:16:16.710

Chairman Cliff Thier: Motion would have to have a majority, so it time

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01:16:17.130 --> 01:16:18.420

Chairman Cliff Thier: Would mean the motion.

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01:16:18.480 --> 01:16:24.360

Chairman Cliff Thier: Any motion or any application would fail if we don't have a majority. That's why I would

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01:16:24.690 --> 01:16:25.830

Commissioner Jed Usich: Like to put on

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01:16:25.920 --> 01:16:27.000

Commissioner Jed Usich: Any kind of vote.

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01:16:28.260 --> 01:16:37.020

Chairman Cliff Thier: For a another meeting as john said we have the opportunity to do we certainly would continue to hear from the

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01:16:37.350 --> 01:16:38.310

Commissioner Jed Usich: Public tonight.

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01:16:38.760 --> 01:16:42.540

Chairman Cliff Thier: And if the applicant has any responses to the public tonight.

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01:16:42.810 --> 01:16:46.890

Chairman Cliff Thier: We don't have to take a vote. And because we were sort of undermanned

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01:16:46.980 --> 01:16:49.020

Chairman Cliff Thier: This evening, I thought we were going to have

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01:16:49.020 --> 01:16:49.530

Chairman Cliff Thier: Five.

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01:16:49.560 --> 01:16:53.370

Chairman Cliff Thier: Commissioners when we don't. And so

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01:16:55.320 --> 01:16:57.660

Chairman Cliff Thier: That's my recommendation. Obviously, if

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01:16:58.170 --> 01:17:08.910

Chairman Cliff Thier: If a member if the three of you remaining want to have a vote tonight. We can certainly do that. But I'm just concerned about a 222 tie on any any motion.

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01:17:11.310 --> 01:17:13.710

Chairman Cliff Thier: Michael Beauchamp. What is your feeling on that.

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01:17:15.810 --> 01:17:28.590

Commissioner Michael R Beauchamp: I cliff. I agree with you. I think under the circumstances here and we have a, I guess we're, we're, we need to buy legacy. A couple more of our members at the next meeting. I think we should wait we have time.

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01:17:29.370 --> 01:17:29.790

Chairman Cliff Thier: All right.

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01:17:30.240 --> 01:17:35.910

Commissioner Michael R Beauchamp: I'm just on our side there's there's we we have time. So we can take the time right

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01:17:36.750 --> 01:17:37.980

Chairman Cliff Thier: Commissioner Breckenridge

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01:17:38.910 --> 01:17:41.160

Commissioner Robert Breckinridge: Yeah, I'm comfortable way. Okay.

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01:17:41.520 --> 01:17:43.170

Chairman Cliff Thier: And commissioner who says

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01:17:45.360 --> 01:17:57.150

Commissioner Jed Usich: Yeah, my guess is the applicants might agree with that because it was to two times does not pass that I think kills the application does not

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01:17:58.920 --> 01:17:59.160

Chairman Cliff Thier: Get

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01:18:00.480 --> 01:18:00.630

It.

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01:18:05.040 --> 01:18:12.180

Commissioner Jed Usich: Yeah, so it's a bit of a gamble. If we're going to vote right now. I don't know where the Commissioner stand on it, which is

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01:18:13.380 --> 01:18:14.130

Commissioner Jed Usich: Appropriate but

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01:18:16.950 --> 01:18:28.410

Commissioner Jed Usich: I don't know if you want to ask the applicants, but I would tend to agree that you know if 30 days doesn't make or break anything I would wait until we have a quorum to make a definitive decision.

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01:18:29.850 --> 01:18:30.270

Commissioner Jed Usich: At least

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01:18:31.680 --> 01:18:33.210

Commissioner Jed Usich: A chance for

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01:18:34.800 --> 01:18:36.060

Commissioner Jed Usich: A solid resolution to this.

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01:18:36.630 --> 01:18:37.350

Chairman Cliff Thier: All right. Thank you.

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01:18:38.970 --> 01:18:43.260

Chairman Cliff Thier: John do we need. I'm sorry. JOHN your microphone is off.

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01:18:44.190 --> 01:18:48.300

John McCahill- Town Staff: Can I just ask Carrie has any additional need to clarify anything for us like

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01:18:49.350 --> 01:18:54.840

Kari Olson: Hey, I just want to be very clear that regardless of whether you vote on the intervention tonight.

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01:18:56.490 --> 01:18:57.510

Kari Olson: Not broad

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01:18:58.560 --> 01:19:15.990

Kari Olson: Protection and all of its members and every other member of the public still has the right to be heard. So we want to make sure that we do afford them the opportunity to present their arguments and that actually may inform you on your ultimate decision.

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01:19:16.260 --> 01:19:17.460

Commissioner Jed Usich: Whether intervention that's

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01:19:17.460 --> 01:19:23.400

Kari Olson: Appropriate. Um, but I did want to make sure that everybody was mindful of that.

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01:19:24.390 --> 01:19:25.530

Chairman Cliff Thier: I think we are

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01:19:26.610 --> 01:19:38.940

Chairman Cliff Thier: And we will do our best to make sure at a following meeting by hook or by crook. We have at least five members of the Commission on. We have a vacancy right now. So that brings a standard only six

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01:19:38.940 --> 01:19:41.220

Chairman Cliff Thier: active members, which means

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01:19:41.250 --> 01:19:42.930

Chairman Cliff Thier: We can't have two people.

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01:19:43.980 --> 01:19:47.700

Chairman Cliff Thier: Not participating. Who knows, maybe we'll have a seventh

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01:19:47.700 --> 01:19:48.510

Commissioner Jed Usich: Member by

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01:19:48.630 --> 01:19:50.010

Chairman Cliff Thier: December. I don't know.

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01:19:51.540 --> 01:19:54.180

Chairman Cliff Thier: Right now I'm looking for any hands of public that

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01:19:55.140 --> 01:19:55.890

Brian R. Smith: Mr. Chairman.

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01:19:57.180 --> 01:19:58.860

Brian R. Smith: This is Brian Smith, if I could be

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01:19:59.310 --> 01:20:00.030

Brian R. Smith: Heard on it.

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01:20:00.090 --> 01:20:01.830

Brian R. Smith: On this question because it kind of leaves.

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01:20:01.860 --> 01:20:03.870

Brian R. Smith: Leaves not real preservation

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01:20:04.290 --> 01:20:05.250

Commissioner Jed Usich: in limbo.

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01:20:05.610 --> 01:20:07.020

Brian R. Smith: I mean, we understand

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01:20:07.110 --> 01:20:07.680

Brian R. Smith: You're not

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01:20:07.800 --> 01:20:21.270

Brian R. Smith: Going to vote tonight, and I understand that I appreciate the sentiment. And the reason why, but I think we might actually get a rare moment of agreement with attorney Brooks and others that that hearing should be held open until you

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01:20:21.270 --> 01:20:22.590

Brian R. Smith: Can decide whether

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01:20:22.920 --> 01:20:25.080

Brian R. Smith: Intervention should be granted to

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01:20:25.110 --> 01:20:26.130

Commissioner Jed Usich: Narrow because

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01:20:26.760 --> 01:20:27.930

Brian R. Smith: It does make a

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01:20:27.930 --> 01:20:29.280

Brian R. Smith: Material difference to

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01:20:29.340 --> 01:20:31.020

Brian R. Smith: Us as a whether we're

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01:20:31.380 --> 01:20:33.480

Brian R. Smith: Full party or just another member

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01:20:33.510 --> 01:20:34.290

Of the public

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01:20:35.310 --> 01:20:35.580

Chairman Cliff Thier: Well,

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01:20:35.610 --> 01:20:38.460

Chairman Cliff Thier: If I, if I understand correctly, and

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01:20:38.880 --> 01:20:39.960

Chairman Cliff Thier: Kearny Olson.

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01:20:40.470 --> 01:20:41.010
Please.

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01:20:43.350 --> 01:20:45.630
Chairman Cliff Thier: chime in if if I have this wrong.

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01:20:46.620 --> 01:20:50.130
Chairman Cliff Thier: There is no harm to the

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01:20:51.450 --> 01:20:58.380
Chairman Cliff Thier: Applicant in terms of its rights if we continue this public meeting into the December meeting.

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01:20:59.370 --> 01:21:00.240
Commissioner Jed Usich: Is that wrong.

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01:21:00.420 --> 01:21:12.000
Kari Olson: Jamie, I think that's what that's what attorney Smith is basically asking for. He's asking that you not close the public hearing tonight, but that you leave it open to render a decision on the intervention.

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01:21:12.600 --> 01:21:25.710
Chairman Cliff Thier: Yes, I think that that makes a lot of sense. And then that would be the first boat we take at our next meeting, whether or not to approve them as entertainers and then the second vote.

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01:21:25.710 --> 01:21:26.370
Chairman Cliff Thier: Would be

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01:21:26.610 --> 01:21:29.040
Chairman Cliff Thier: On whether to approve the application.

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01:21:31.560 --> 01:21:33.180
Kari Olson: On add that we need to be

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01:21:33.330 --> 01:21:39.630
Kari Olson: Mindful of the time frame. I have not done the math. I'm sure I'm sure that john has

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01:21:41.370 --> 01:21:43.950
Commissioner Jed Usich: 35 days. Okay, well,

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01:21:45.690 --> 01:21:46.260

Kari Olson: I'm sorry.

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01:21:46.710 --> 01:21:47.910

Chairman Cliff Thier: Today I think john

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01:21:48.630 --> 01:21:48.930

So,

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01:21:50.490 --> 01:22:10.860

John McCahill- Town Staff: There we go. So we have 65 days to conduct a public hearing. We are currently at de by my count our next meeting on December 1 would would. I'm sorry. We're at 30 days. Today, our next meeting on December 1 would be at 56 days. So it's within the 65 day window for conducting a public

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01:22:10.860 --> 01:22:11.520

John McCahill- Town Staff: Hearing so

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01:22:11.610 --> 01:22:12.450

John McCahill- Town Staff: We can do that.

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01:22:13.170 --> 01:22:16.320

John McCahill- Town Staff: Without the benefit of an extension from the applicant and at the discretion of the

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01:22:17.850 --> 01:22:23.100

Chairman Cliff Thier: All right, I think, I think that there's a consensus among the Commissioners that that we

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01:22:23.640 --> 01:22:24.960

Chairman Cliff Thier: Hold both votes.

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01:22:25.830 --> 01:22:28.650

Chairman Cliff Thier: On our net at that next meeting, but

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01:22:30.180 --> 01:22:33.840

Commissioner Jed Usich: But if I can interject a quick question. Is there a distinction to be made between

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01:22:35.880 --> 01:22:41.190

Commissioner Jed Usich: Say the application for the delineation versus the

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01:22:43.620 --> 01:22:58.950

Commissioner Jed Usich: Interview your status is that a different type of situation where, let's say us to to to to to to vote on the integrator status does that. What does that actually mean I understand what it means in the context of an application, but not incubator.

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01:23:03.360 --> 01:23:07.740

Kari Olson: Yes, so the question is, they have filed a petition for intervention.

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01:23:08.550 --> 01:23:09.270

Kari Olson: And

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01:23:09.600 --> 01:23:11.460

Commissioner Jed Usich: Your obligation or

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01:23:12.360 --> 01:23:24.120

Kari Olson: Whether intervention is appropriate within the jurisdiction of the Commission and, again, as we've been discussing tonight. That's an open question. But at the end of the day.

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01:23:24.540 --> 01:23:26.490

Kari Olson: If you vote to allow them to

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01:23:26.490 --> 01:23:30.480

Kari Olson: Intervene they will be granted party status.

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01:23:31.080 --> 01:23:32.370

Commissioner Jed Usich: In these proceedings.

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01:23:32.940 --> 01:23:38.040

Kari Olson: As well as standing to appeal whatever decision you render

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01:23:38.970 --> 01:23:41.340

Commissioner Jed Usich: If you deny them intervene or status.

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01:23:41.790 --> 01:23:51.150

Kari Olson: They will similarly likely have a basis to appeal, arguing that they were entitled based solely on their verified complaint.

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01:23:52.200 --> 01:23:57.090

Kari Olson: To intervene and that's when the battle would begin as to whether

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01:23:57.330 --> 01:23:57.570

Commissioner Jed Usich: What

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01:23:57.690 --> 01:23:59.040

Kari Olson: They have argued

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01:23:59.520 --> 01:24:03.420

Kari Olson: Really constitutes conduct within the jurisdiction of this Commission.

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01:24:03.930 --> 01:24:05.130

Kari Olson: For purposes of that.

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01:24:10.800 --> 01:24:13.290

Commissioner Jed Usich: Carrie Carrie Carrie Carrie, what happens is the third case.

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01:24:15.810 --> 01:24:16.950

Commissioner Jed Usich: In the case of a tie.

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01:24:20.400 --> 01:24:22.770

Commissioner Jed Usich: Status petition. Yeah.

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01:24:23.190 --> 01:24:32.490

Kari Olson: If somebody made a motion to allow the intervention and you have a tie. And then I believe under Robert's Rules, the motion would fail.

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01:24:35.850 --> 01:24:40.440

Commissioner Jed Usich: Robert's Rules is the is the are the guidelines that we'd fall

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01:24:40.920 --> 01:24:41.580

Kari Olson: It's the fault.

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01:24:43.050 --> 01:24:45.390

Kari Olson: It's the fallback position, we always in Connecticut.

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01:24:45.750 --> 01:24:48.900

Kari Olson: We have to look at Robert's Rules in the context of the freedom of information.

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01:24:49.080 --> 01:24:49.350

Commissioner Jed Usich: Act.

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01:24:49.710 --> 01:24:51.090

Kari Olson: So they don't always trump.

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01:24:51.990 --> 01:24:52.950

Kari Olson: But, um,

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01:24:53.070 --> 01:24:55.320

Kari Olson: They are your fallback position.

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01:24:56.730 --> 01:24:59.070

Commissioner Jed Usich: Okay. All right. I'm going to

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01:24:59.670 --> 01:25:01.980

Chairman Cliff Thier: Go now to looking for hands.

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01:25:03.150 --> 01:25:03.480

Chairman Cliff Thier: Because

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01:25:03.900 --> 01:25:04.320

Brian R. Smith: This is

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01:25:05.970 --> 01:25:15.150

Brian R. Smith: Just this is exactly the issue that we're facing. We have witnesses that I mentioned at the outset of my presentation. We just wanted to address.

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01:25:15.450 --> 01:25:17.220

Commissioner Jed Usich: The intervention petition first

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01:25:17.490 --> 01:25:19.530

Brian R. Smith: I would like to put our witnesses on

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01:25:20.910 --> 01:25:23.910

Brian R. Smith: To that we have lined up that are here.

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01:25:24.390 --> 01:25:26.010

Commissioner Jed Usich: And if we had, of course.

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01:25:26.130 --> 01:25:37.140

Brian R. Smith: been granted party stats, we'd have an absolute right to do that and have more than five minutes each. So this is kind of put us in a quandary unless you would allow us to go forward. Right now we're ready so

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01:25:37.590 --> 01:25:54.900

Chairman Cliff Thier: Well, it might. Yeah. I understand this, this might be a disadvantage to you to get your witnesses back online at our December meeting, I only mentioned it, call your attention to the fact that we may have two more Commissioners attending that meeting.

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01:25:55.740 --> 01:25:57.090

Commissioner Jed Usich: And they will not have

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01:25:57.150 --> 01:26:09.180

Chairman Cliff Thier: benefited by whatever information you want to impart tonight. That's entirely up to you if you want to have your witnesses talk speak this evening on the intervening status.

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01:26:10.560 --> 01:26:19.860

Chairman Cliff Thier: Petition, that's fine with me. But again, we're in a we're in a position where we're hoping to get more more participation by Commissioners at our next meeting.

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01:26:20.550 --> 01:26:31.860

Brian R. Smith: No, I understand that would what we would be addressing. Would it be the substance of the merits of their application not further argument on the intervention petition.

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01:26:33.840 --> 01:26:37.440

Chairman Cliff Thier: Because we would then be that can be done this evening. Absolutely.

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01:26:37.590 --> 01:26:45.060

Brian R. Smith: But that's what I'm talking about. But yeah, I was ready to proceed with that we were only free up the intervention. We thought we should clarify that first so

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01:26:45.090 --> 01:27:01.710

Chairman Cliff Thier: But again, again, we're hoping to have at least two more Commissioners president at our next meeting. They will not benefit from whatever he said tonight. It's entirely up to you if you want to go ahead public public hearing proceeds.

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01:27:03.570 --> 01:27:05.880

Chairman Cliff Thier: So what do you wish to do

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01:27:06.330 --> 01:27:06.630

Brian R. Smith: Well,

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01:27:06.720 --> 01:27:08.250

Chairman Cliff Thier: Well, I'm sorry to

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01:27:09.570 --> 01:27:11.100

Kari Olson: interject chairman there.

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01:27:12.540 --> 01:27:21.180

Kari Olson: Anybody acting on this application is going to have to bring them up to speed. So they're going to have to either listen to the hearing or

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01:27:22.500 --> 01:27:24.150

Kari Olson: Read the verbatim minutes

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01:27:25.410 --> 01:27:39.360

Kari Olson: In order to act on this application. So while it's not the benefit of in person presentation. Anyone who acts on this application will have the benefit of whatever attorney Smith puts forth to the

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01:27:39.810 --> 01:27:41.160

Chairman Cliff Thier: Right attorney Smith.

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01:27:43.230 --> 01:27:44.100

Chairman Cliff Thier: Floors yours.

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01:27:44.820 --> 01:27:47.880

Brian R. Smith: Yes, thank you. Thank you, Mr. Chairman, members of the Commission.

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01:27:49.890 --> 01:28:06.780

Brian R. Smith: Week, we will say further comment on the merits of the intervention petition for the next meeting itself, but I want to get to

the merits of the actual application as before this Commission tonight which is the Whelan delineation that has been proposed by the applicants and I would

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01:28:06.810 --> 01:28:15.060

Chairman Cliff Thier: I just wanted to state right now that the applicants will have a an opportunity to respond to your presentation.

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01:28:15.240 --> 01:28:15.780

Chairman Cliff Thier: Of course,

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01:28:15.840 --> 01:28:17.100

Brian R. Smith: When you're done, I would expect so.

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01:28:17.250 --> 01:28:20.910

Chairman Cliff Thier: I just wanted to clarify that for the applicants benefit.

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01:28:21.990 --> 01:28:22.380

Thank you.

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01:28:23.940 --> 01:28:26.280

Brian R. Smith: And I think it just, it bears.

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01:28:27.570 --> 01:28:33.090

Brian R. Smith: repeating that you know under Section 22 a 42 page subsection b that

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01:28:33.720 --> 01:28:42.540

Brian R. Smith: That no regulations are no boundaries of an inland well and watercourses are allowed to go for unless you have a public hearing, such as this, and

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01:28:43.080 --> 01:28:53.820

Brian R. Smith: And that sort of a theme is like, Well, you know, we have all this all this evidence white, sort of, why are we here the applicants comments that we have to do this. Well, we have comments and we have

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01:28:55.230 --> 01:29:04.200

Brian R. Smith: What has changed since the last time. Everyone was before this commission is that the applicants have done some more work on the on their property.

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01:29:05.190 --> 01:29:19.560

Brian R. Smith: But we also have our own soil scientist who has taken examined the work product that has been performed and has Comments, questions and critiques that I would now like to offer so

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01:29:21.000 --> 01:29:35.850

Brian R. Smith: My first witness would be Timothy welling who is a soil scientist and he is present tonight he was unable to be as you may recall the technical difficulties last time, but he if he would raise his hand and maybe he can be invited in. Mr. Chairman,

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01:29:36.150 --> 01:29:40.290

Chairman Cliff Thier: I'm looking right now. I see. Okay, Miss dwelling.

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01:29:43.080 --> 01:29:44.130

Chairman Cliff Thier: I am

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01:29:48.330 --> 01:29:51.060

Chairman Cliff Thier: Miss dwelling. I don't see your camera on.

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01:29:51.810 --> 01:29:52.140

Brian R. Smith: There. Yeah.

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01:29:52.260 --> 01:29:53.700

Chairman Cliff Thier: There we go. Okay. Yes.

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01:29:55.530 --> 01:29:56.490

Brian R. Smith: So, all right.

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01:29:57.510 --> 01:29:58.410

Tim Welling: Good evening. Hey,

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01:29:58.440 --> 01:30:01.410

Chairman Cliff Thier: Going if you could maybe move back to your faces half cut off.

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01:30:03.870 --> 01:30:04.350

Tim Welling: Okay.

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01:30:05.610 --> 01:30:12.060

Tim Welling: All right. Well, good evening. I'm glad to be here. I'm now I'm my certified soil scientist.

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01:30:13.110 --> 01:30:30.480

Tim Welling: And I have not actually been on the field to look at this, but I've looked at all the information has been presented and I've developed some comments, based on that. Now what I first saw was this is, it's a very

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01:30:31.860 --> 01:30:34.560

Tim Welling: Complicated site, as you well know,

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01:30:35.580 --> 01:30:46.830

Tim Welling: And there's a lot of disturbed soil on there. And what I would like to see in there is like, you know, potentially a map that shows what is disturb soil and what is not Serb soil.

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01:30:47.400 --> 01:31:06.600

Tim Welling: Um, because I think that would give us a better understanding of what we're looking at in the way of disturbed wetland soil disturbed alluvial floodplain soil and what is not. Now again, it was called the patchwork and your soil scientist have actually

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01:31:07.620 --> 01:31:15.090

Tim Welling: Found areas that are not disturb and we give a clear delineation of what is an alluvial or floodplain soil.

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01:31:15.570 --> 01:31:31.740

Tim Welling: And then they found other areas that were disturbed and those disturbed areas, as it turns out, is pretty significant. So they had to go to basically a secondary criteria, which, again, the word secondary is some

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01:31:32.940 --> 01:31:53.130

Tim Welling: Kind of concerning because it's not really defined. But what I've been hearing is they call it an elevation okay and elevation. Now if you went to the USDA guide of soil taxonomy and look for elevation is a soil criteria would be very difficult to find.

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01:31:54.210 --> 01:32:11.430

Tim Welling: Now I know that secondary criteria are used quite often in federal which is not New York is not Connecticut, but say in New York, you could use a Federal jurisdiction or termination and use a secondary CRITERIA, BUT I'M IN CONNECTICUT Connecticut some

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01:32:13.080 --> 01:32:24.360

Tim Welling: Inland wetlands regulations are based on soil type. Okay, what the soil is not what a secondary criteria suggest it could be. Okay, so that's

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01:32:25.290 --> 01:32:36.570

Tim Welling: A big, big concern. Now when we talk about the elevation in there. Now again, that was I assumed to be the 100 year flood elevation, because when you look at the current map.

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01:32:37.290 --> 01:32:47.670

Tim Welling: The lines, line up very well with the hundred year flood elevation. Now, what is the hundred year flood elevation 100 year flood elevation is an engineering number that is

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01:32:48.390 --> 01:32:56.460

Tim Welling: Used to again to do a number of things right number, things like for insurance and for building and such. And it's an

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01:32:57.060 --> 01:33:05.430

Tim Welling: Elevation that is brought together by coming in with lots of data and probably the most important piece of data in there is actually a soils.

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01:33:06.090 --> 01:33:13.380

Tim Welling: Okay, so you can look at the soils. And again, this was I brought in my last piece of evidence that

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01:33:13.770 --> 01:33:21.090

Tim Welling: A graduate student in Purdue in the state of Indiana looked at this is a movie on floodplain soils looked at them.

683

01:33:21.510 --> 01:33:30.840

Tim Welling: And based on where the soils were made a projection of the hundred year flood plain and was some pretty close to those elevations.

684

01:33:31.350 --> 01:33:37.680

Tim Welling: Okay, so it wasn't the other way around. It's not that the floodplain is going to tell you

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01:33:38.340 --> 01:33:57.600

Tim Welling: Where the soils are. It's the soils are going to tell you where the flood elevations are because again, how did those soils form those soils formed through flooding and deposition. So what we've got here at this situation is pretty complex. And we've got

686

01:33:58.710 --> 01:34:13.140

Tim Welling: Elevation, we've got partial data, but we don't have both. So it's very difficult. Um, I would say, by looking at the scenario to come up with anything other than

687

01:34:13.770 --> 01:34:27.870

Tim Welling: What you have originally mapped by your town map is being significantly different based on the disturbed soils, you couldn't really show

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01:34:28.680 --> 01:34:48.480

Tim Welling: A difference. So if you look at the map. Now again this map was created in a course Gail and was used as a guideline, but since it's been disturbed. It really doesn't show that that disturbed area is significantly different from what was mapped originally

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01:34:49.590 --> 01:35:09.600

Tim Welling: Now what are other towns doing in the town of Glastonbury they are very adamant in that their soils in wetlands are different from what their flood elevations are. And even though the lines, maybe close together or overlapping one is different from the other

690

01:35:10.620 --> 01:35:15.570

Tim Welling: And so that's what I'm seeing here on the situation is. It's kind of a

691

01:35:16.890 --> 01:35:30.360

Tim Welling: Difficult from the outside looking in to see that this is like in a clear change to the map as they applicant is presenting is is adequate.

692

01:35:31.470 --> 01:35:50.940

Tim Welling: With the amount of work that they've done. Now if further work and a preparation on the map that shows what is the disturbed areas. And what is this dirt wetland areas was disturbed other areas that is something that could be brought forward in a future time

693

01:35:51.960 --> 01:36:00.300

Tim Welling: Now again, Michael Keaton was right on point when he was talking about the hundred year flood elevation matching the soil boundary. And I think that's some pretty astute

694

01:36:01.740 --> 01:36:02.790

Tim Welling: Online all into itself.

695

01:36:05.040 --> 01:36:20.220

Tim Welling: Because that's what the soils sciences have done, they have used a secondary criteria of elevation is they call elevation, but it's really synonymous to the 100 year flood elevation, which again is not a soil criteria.

696

01:36:28.230 --> 01:36:29.910

Chairman Cliff Thier: Mr welling. Have you done

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01:36:30.450 --> 01:36:31.530

Tim Welling: Yes. Okay.

698

01:36:32.430 --> 01:36:37.680

Chairman Cliff Thier: Mr. Smith. Do you have any thing for a presentation.

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01:36:38.310 --> 01:36:50.700

Brian R. Smith: Yes, I do. Mr. Chairman and members of the commission of the I wanted to sort of segue into the other question that where it is Mr welling described and which

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01:36:51.720 --> 01:37:02.580

Brian R. Smith: Way the elevations are being used here sort of in reverse, to what is the practice should be the practice. And the other thing is that although Mr Russo took

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01:37:03.270 --> 01:37:21.690

Brian R. Smith: Exception that this is that the elevation was a surrogate. It happens to coincide with the hundred year flood line that that is really what is going on here. And that is the you know the there is a better way as well. I just described to get to the result now.

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01:37:23.460 --> 01:37:34.920

Brian R. Smith: The other point is that when you when you get into a policy discussion. What is really going on here is that this Commission is being asked to legislate itself.

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01:37:35.430 --> 01:37:53.250

Brian R. Smith: As Janet Brooks said in her letter commenting not quite correctly but commenting on statements made by Dr. Clemens that he should be taking his theories. So she put it, which isn't really his theories but we'll get to that a minute because he's here tonight.

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01:37:54.990 --> 01:37:59.670

Brian R. Smith: Have you know the 500 a year line being a secondary surrogate

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01:38:00.600 --> 01:38:08.610

Brian R. Smith: Actually go to the legislature. Well, I think using the hundred year flood by should also be going to the legislature or if they're going to be using elevation, such as this.

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01:38:09.540 --> 01:38:24.960

Brian R. Smith: That I don't, I find it. Nowhere in the statute, the soils methodology is what's in the statute, so it's it's a practice that it doesn't fit as the testimony. You just heard suggest for a site like this where there's a heavily

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01:38:25.860 --> 01:38:31.680

Brian R. Smith: Large amount of disturbed soils. Now, the legislature legislature should be the one to decide.

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01:38:32.310 --> 01:38:45.390

Brian R. Smith: Use elevations. If you, if there's no other method that can be accomplished because you are regulation section 3.1 said is supposed to be a precise location of the well and some watercourses and

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01:38:46.170 --> 01:38:54.030

Brian R. Smith: That's what your regulation requires and basically you are following along with the with the general statutes, so

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01:38:54.900 --> 01:39:05.940

Brian R. Smith: You're, you're sort of being asked to be sort of actively regulate, you know, changing the regulations to suit the situation when you don't really have the authority to do it so

711

01:39:07.260 --> 01:39:17.940

Brian R. Smith: That that's the premise for why we are saying, if you're going to start looking at policy perspective that you would be looking at climate resiliency, such as Dr. Clemens talked about

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01:39:18.780 --> 01:39:35.310

Brian R. Smith: As you said at the outset, Mr. Chairman. This really isn't in our purview, and we agree we not road preservation does not suggest you use the 500 year flood vine or the 100 year flood line, that's not it. We suggest that until there is a

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01:39:36.390 --> 01:39:46.140

Brian R. Smith: Better study completed that this that the Commission stay with the current map until it can be properly the proper methodology can be employed.

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01:39:46.650 --> 01:40:04.560

Brian R. Smith: I would like to ask Mr Dr Clements to further comment on his points so that we can and then we can wrap this up on our presentation. So I if I would have Dr. Clement, I think he's, he should have if he can put his hand up. Maybe you can find a, Mr. Chairman.

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01:40:05.400 --> 01:40:07.530

Chairman Cliff Thier: I am looking for him now.

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01:40:07.950 --> 01:40:10.770

Brian R. Smith: Yeah, he he's raising his actual hand.

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01:40:12.360 --> 01:40:13.830

Brian R. Smith: You could see him so

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01:40:13.890 --> 01:40:16.410

Chairman Cliff Thier: Okay. Dr. Clements please turn on your microphone.

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01:40:20.610 --> 01:40:23.430

Dr. Michael W. Klemens: Green Michael Clemens

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01:40:24.720 --> 01:40:41.460

Dr. Michael W. Klemens: Not a soil scientist, I am delighted that that myth has been firmly put to bed by Mr Klein this evening. I never have represented on the sauce time i'm i'm a policy.

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01:40:42.660 --> 01:40:46.440

Dr. Michael W. Klemens: Scientist works a lot on policy and ecology.

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01:40:47.730 --> 01:40:58.320

Dr. Michael W. Klemens: And I'd like to start with attorney Brooks, I had the pleasure of working with many issues comment that align on a paper piece of paper.

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01:41:00.390 --> 01:41:04.290

Dr. Michael W. Klemens: Doesn't have an impact. It's not doesn't result in conduct.

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01:41:06.090 --> 01:41:18.630

Dr. Michael W. Klemens: When you put a line on a piece of paper and designate something as a protected or regulated area you place it level of performance protection.

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01:41:19.770 --> 01:41:20.250

Dr. Michael W. Klemens: On

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01:41:21.600 --> 01:41:22.050

Dr. Michael W. Klemens: The map.

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01:41:23.730 --> 01:41:26.220

Dr. Michael W. Klemens: Conversely, when you remove the line.

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01:41:27.390 --> 01:41:29.910

Dr. Michael W. Klemens: You remove that level of protection.

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01:41:32.160 --> 01:41:35.820

Dr. Michael W. Klemens: In this case, and the present condition.

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01:41:36.870 --> 01:41:39.450

Dr. Michael W. Klemens: This Commission has authority.

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01:41:40.470 --> 01:41:49.170

Dr. Michael W. Klemens: Over a large piece of land and we can go back and forth an argument where the weapon line is yours.

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01:41:50.580 --> 01:41:55.470

Dr. Michael W. Klemens: But right now, you protect on your current regulations.

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01:41:57.180 --> 01:42:01.290

Dr. Michael W. Klemens: Nearly up to the 500 year that includes 500 year flood

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01:42:02.790 --> 01:42:12.990

Dr. Michael W. Klemens: Yep. The applicant succeeds, and what they wish to do. And I point out that last time they proposed the development

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01:42:14.010 --> 01:42:34.230

Dr. Michael W. Klemens: And it clearly didn't meet muster. They didn't have enough land in the development to retain or their order and run off but it went to a procedure that least resemble some semblance of a proposal.

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01:42:35.760 --> 01:42:37.380

Dr. Michael W. Klemens: Having failed at this

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01:42:38.400 --> 01:42:45.330

Dr. Michael W. Klemens: They now have a new strategy that strategy simply is, let's just open up the whole

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01:42:47.100 --> 01:42:52.710

Dr. Michael W. Klemens: Strip your Commission have any ability to regulate a large portion of it.

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01:42:53.760 --> 01:43:01.980

Dr. Michael W. Klemens: And there is one level of protection and review has been at the stroke of a pen eliminated.

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01:43:03.360 --> 01:43:03.900

Dr. Michael W. Klemens: So,

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01:43:05.220 --> 01:43:07.920

Dr. Michael W. Klemens: This is the big issue here.

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01:43:09.120 --> 01:43:19.710

Dr. Michael W. Klemens: We can go back and forth and argue about gets lines bloodlines. But the reality is if this map is approved.

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01:43:20.730 --> 01:43:24.540

Dr. Michael W. Klemens: amendment is approved a large portion of land.

744

01:43:26.100 --> 01:43:31.800

Dr. Michael W. Klemens: Comes out of your regulations or out of your ability to permit.

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01:43:32.850 --> 01:43:34.830

Dr. Michael W. Klemens: Now we have heard about

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01:43:37.950 --> 01:43:43.140

Dr. Michael W. Klemens: The town of Avon doesn't allow certain structures in the 501

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01:43:44.280 --> 01:43:48.720

Dr. Michael W. Klemens: I don't know how that would be implemented absent a

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01:43:50.490 --> 01:43:53.160

Dr. Michael W. Klemens: Proper review all your permission.

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01:43:56.370 --> 01:44:14.760

Dr. Michael W. Klemens: I think that's the entire issue I have is, you are removing a large piece of land that does flood that does not that logical. Now you from your ability to have some say in how it is that

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01:44:16.320 --> 01:44:32.550

Dr. Michael W. Klemens: Why they can propose a development and go through a traditional development procedure and provide you with a weapons amendment as part of that. I don't understand.

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01:44:33.630 --> 01:44:38.610

Dr. Michael W. Klemens: What I do see is this is a, those of you who practice.

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01:44:39.720 --> 01:44:40.920

Dr. Michael W. Klemens: This is a classic

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01:44:44.430 --> 01:44:46.170

Dr. Michael W. Klemens: Case of segmentation.

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01:44:47.400 --> 01:44:52.710

Dr. Michael W. Klemens: Now, we don't have segmentation laws per se in Connecticut.

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01:44:54.000 --> 01:45:07.710

Dr. Michael W. Klemens: But as an ecologist, I see this as a very skillful attempt to segment the decision making process into pieces and therefore obscure the ultimate

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01:45:08.910 --> 01:45:10.590

Dr. Michael W. Klemens: Effect. It may or may not

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01:45:13.410 --> 01:45:16.500

Dr. Michael W. Klemens: I also want to end with one last statement.

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01:45:18.390 --> 01:45:25.710

Dr. Michael W. Klemens: What I'm well aware of the flood control structures that are on the Farmington both branches.

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01:45:27.090 --> 01:45:29.010

Dr. Michael W. Klemens: I don't share clients.

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01:45:30.930 --> 01:45:53.580

Dr. Michael W. Klemens: Confidence in technology and technological alliance, we have seen many dams fail, we are seeing around the world remarkable footage of unprecedented rainfall events, destroying infrastructure taking out breaches things that will never anticipate

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01:45:55.080 --> 01:46:04.410

Dr. Michael W. Klemens: And let's say for argument, if we have a flood that can no longer be detained by these five principles structures.

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01:46:05.520 --> 01:46:15.660

Dr. Michael W. Klemens: Deflect pitfalls touches on the dams will be opened and you will experience that 500 year flood, if not worse.

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01:46:16.680 --> 01:46:22.050

Dr. Michael W. Klemens: So I think we've got to pull apart these things and I respectfully.

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01:46:24.600 --> 01:46:27.900

Dr. Michael W. Klemens: Suggest that it's not just the wetland.

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01:46:29.190 --> 01:46:40.170

Dr. Michael W. Klemens: That you're losing control over wherever they may be you're losing your losing control over a large portion of plant that you currently have some saying

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01:46:41.400 --> 01:47:01.860

Dr. Michael W. Klemens: And again, I asked what is the benefit to the public to the citizens of Avon. By doing this, I see no benefit. The only benefit. I see is, according to the applicant by removing a layer or review it currently exists.

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01:47:03.120 --> 01:47:09.390

Dr. Michael W. Klemens: That's really the essence of what I have to say lines on paper matter.

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01:47:10.830 --> 01:47:17.520

Dr. Michael W. Klemens: They could sweep have a pen. You can trade it protected area and National Park.

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01:47:18.900 --> 01:47:29.100

Dr. Michael W. Klemens: And you sweep have a pen. You could open up a large part of Avon to potential without without you look at the

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01:47:30.390 --> 01:47:31.980

Dr. Michael W. Klemens: Agency. Thank you.

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01:47:33.810 --> 01:47:36.030

Chairman Cliff Thier: Thank you, Dr. Clemens

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01:47:37.470 --> 01:47:39.540

Chairman Cliff Thier: Attorney Smith, do you have anything else.

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01:47:39.690 --> 01:48:00.360

Brian R. Smith: You wish just a very short. So make sure that I'm then we'll be all done. Mr. Chairman, which is simply that I think the reason that we are here not road preservation anchors here tonight in opposition to this particular application is because is once again asking that you basically

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01:48:01.560 --> 01:48:09.360

Brian R. Smith: Legislature legislative the approval not not look at just the pure science in determining the locations.

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01:48:10.560 --> 01:48:20.280

Brian R. Smith: As our soil scientist has pointed out, and then if you get to the point of where you are legislating as opposed to looking at the property.

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01:48:21.420 --> 01:48:24.720

Brian R. Smith: From a scientific viewpoint completely

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01:48:26.520 --> 01:48:34.800

Brian R. Smith: Because we are not attacking the science that has been done, it hasn't been done enough is what we are suggesting and showing tonight.

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01:48:35.430 --> 01:48:42.990

Brian R. Smith: And that, but if you go and they say, well, they throw their hands up, say, now we just look at the elevation line that's appropriate. That's something

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01:48:43.680 --> 01:48:56.520

Brian R. Smith: If it's a state statute were to say that we would have to agree, but we don't we don't think the Commission can just on its own agree with that that that position. Secondly,

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01:48:58.440 --> 01:49:03.060

Brian R. Smith: The changing your that right the drawing of a vine is as Attorney Brooks success.

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01:49:03.810 --> 01:49:10.770

Brian R. Smith: With zoning is completely different from wetlands, because a wetlands. Mine is supposed to be based on scientific analysis.

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01:49:11.160 --> 01:49:17.250

Brian R. Smith: zoning. Why is pure policy where you put an industrial zone or commercial zoned residential zone.

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01:49:18.000 --> 01:49:23.790

Brian R. Smith: That that's irrelevant to this commission as you as you well know, because you see applications for

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01:49:24.330 --> 01:49:33.930

Brian R. Smith: All types of those in for regulated activities. But what is significant. The minute you take away and you don't do it with the right

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01:49:34.770 --> 01:49:42.120

Brian R. Smith: To take away the wetlands are very there what you have done is now you allow the prohibitions to vanish.

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01:49:42.630 --> 01:49:51.240

Brian R. Smith: And it's not someone trying to build something or get a permit. They can now do things that they can get it will be illegal to do now, such as, you know, filled in a wetland.

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01:49:52.230 --> 01:50:01.200

Brian R. Smith: Or things like that. I mean, I just as an example. So, that that is what you're facing tonight. That is why we are opposed to this application at this time.

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01:50:01.830 --> 01:50:11.910

Brian R. Smith: I want to thank the Commission and that's where the pollute the unreasonable pollution comes in is you take it away without the proper foundation for

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01:50:12.630 --> 01:50:26.460

Brian R. Smith: Changing the map, then you have now exposed wetlands and what a lot of your soils to unreasonable poetry because people are free to just to do things that they would not otherwise be able to do the

790

01:50:26.880 --> 01:50:35.760

Brian R. Smith: Prohibited now from a filling or you know dredging a wetland except for no exceptions for a state government under the statutes.

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01:50:36.240 --> 01:50:44.730

Brian R. Smith: So with that, we ask respectfully that you've denied this application. We thank you for listening to us and allowing us to proceed.

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01:50:45.360 --> 01:50:57.240

Brian R. Smith: We believe our intervention petition should be granted, but we'll take that up next month, and I appreciate the Commission doesn't want to vote tonight, and I understand fully. Thank you very much.

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01:50:59.550 --> 01:51:00.780

Chairman Cliff Thier: Attorney Brooks.

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01:51:02.460 --> 01:51:04.260

Chairman Cliff Thier: Going to invite you to respond.

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01:51:05.400 --> 01:51:05.760

Chairman Cliff Thier: Yes.

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01:51:05.850 --> 01:51:28.290

Janet Brooks: I first want to ask for clarification is the only thing that the record the public hearing is being left open for his argument on whether or not the intervention petition is granted, that is, is this the end of it, are we presenting our final rebuttal.

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01:51:31.500 --> 01:51:36.960

Chairman Cliff Thier: The, the both matters will be continued the next meeting.

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01:51:39.150 --> 01:51:44.610

Janet Brooks: Should we be holding off our rebuttal to the next meeting.

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01:51:44.850 --> 01:51:48.090

Chairman Cliff Thier: You can if you wish, or you can do it right now.

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01:51:49.500 --> 01:51:52.440

Chairman Cliff Thier: You'll have that opportunity at the next meeting, I promise you.

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01:51:57.090 --> 01:52:00.480

Chairman Cliff Thier: Your microphone seems to be all attorney Brooks.

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01:52:01.170 --> 01:52:01.860

Janet Brooks: Can you hear me.

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01:52:02.460 --> 01:52:03.270

Chairman Cliff Thier: Now, yes.

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01:52:03.420 --> 01:52:05.160

Janet Brooks: Okay, um,

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01:52:07.500 --> 01:52:08.880

Janet Brooks: Well, um,

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01:52:11.460 --> 01:52:19.110

Janet Brooks: I think, I think I'm going to proceed with the rebuttal, as we had planned and I'll ask

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01:52:22.020 --> 01:52:27.180

Janet Brooks: I'll ask Bob Russo to start the rebuttal.

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01:52:28.380 --> 01:52:30.030

Chairman Cliff Thier: Go right ahead Mr Russa

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01:52:31.440 --> 01:52:39.690

Bob Russo: Hello again for the record. My name is Bob Russo. I'm a certified swell scientist with CLA engineers in Norwich, Connecticut, um,

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01:52:40.170 --> 01:52:48.990

Bob Russo: There are a couple of issues, I would like to clear up before I go into the rebuttal that I had prepared. The first is attorney Smith statement.

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01:52:49.560 --> 01:53:04.620

Bob Russo: That by changing this boundary, you would now be exposing alluvial soils and wetlands to impacts and filling. That's absolutely not the case. I need to be clear that this is a clarification of the regulated area.

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01:53:05.820 --> 01:53:16.530

Bob Russo: If the map changes. It doesn't mean that there's something that is wetland that is no longer regulated by their commission that's simply not the case.

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01:53:17.280 --> 01:53:29.940

Bob Russo: The map clarifies the extent of the regulated wetlands. That's all that it does. It doesn't open up some area to filling that was not previously open to fill in.

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01:53:31.140 --> 01:53:35.850

Bob Russo: So that was an incorrect statement. The other thing that I think I need to clarify.

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01:53:37.260 --> 01:53:41.880

Bob Russo: Is is regarding the use of elevation

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01:53:43.140 --> 01:53:52.230

Bob Russo: As one of our soil map and criteria and I just have to say that again before I launch into my prepared rebuttal on

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01:53:53.550 --> 01:54:03.750

Bob Russo: The North Central conservation soil district scientists in their letter in their prepared letter to the condition indicate that is a very appropriate.

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01:54:04.320 --> 01:54:14.040

Bob Russo: technique to use on this site. And those are two soil scientists who have decades of experience in the State of Connecticut. And in fact, one of them for a long time.

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01:54:14.520 --> 01:54:31.650

Bob Russo: held the position of state soil scientist for the State of Connecticut. So I think that when that person with that level of experience indicates to the Commission and an impartial letter that use of elevation on this site is appropriate than the Commission has that on good authority.

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01:54:33.180 --> 01:54:35.190

Bob Russo: With that, I would like to

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01:54:37.080 --> 01:54:49.950

Bob Russo: Go into some responses to the testimony offered by Mr dwelling and Dr. Clemens, I believe that the condition received from me a letter dated October 28 2020

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01:54:50.490 --> 01:55:00.330

Bob Russo: In which I offer written responses to the initial comments made by Mr dwelling and Dr. Clemens, and I would like to review the points in that letter.

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01:55:01.620 --> 01:55:02.070

Bob Russo: I'm

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01:55:03.420 --> 01:55:05.160

Bob Russo: In this dwellings initial letter.

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01:55:07.440 --> 01:55:09.540

Bob Russo: He gets into a discussion.

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01:55:11.760 --> 01:55:24.660

Bob Russo: And expresses a concern that the information by submitted by the applicant has not given any clear evidence that the town of Avon wetland map based on original soils is inaccurate and needs to be changed.

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01:55:25.530 --> 01:55:35.490

Bob Russo: Um, I'd like to ask Gary diamond, who is running the slides to indicate on that is close to the center of the course and immediately adjacent to not road.

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01:55:36.600 --> 01:55:40.410

Bob Russo: That pond is not on the town wide wetland map.

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01:55:41.640 --> 01:55:47.790

Bob Russo: It is a regulated resource, it's very clear that this map needs to be amended.

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01:55:49.020 --> 01:56:01.830

Bob Russo: I will also know that the area that's been referred to as the blob in the past was extensively investigated and that area is now being

circled in general you can see there are a number of test pits that were done there.

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01:56:02.520 --> 01:56:11.790

Bob Russo: And the texture of the soil in that area and the color of the parent material in that soil do not agree with what's mapped in the field.

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01:56:12.240 --> 01:56:34.410

Bob Russo: It is not the same soil series that was mapped are in RCS field data indicates that it's not a winooski soil. It's a different soil and it's a non trivial soil. Those are two out of many examples that show that in fact the town wide wetland map absolutely needs to be corrected.

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01:56:36.300 --> 01:56:38.850

Bob Russo: I'd like to move on to the second point in my letter.

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01:56:39.870 --> 01:56:41.760

Bob Russo: Regarding Mr dwellings testimony.

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01:56:43.710 --> 01:56:54.720

Bob Russo: He asks, he indicates that in the report from NCC DD some flags delineating the wetland boundaries had been re established prior and CCD visit

836

01:56:55.860 --> 01:57:01.170

Bob Russo: And asked which flags. How many, how do we know that these flags are the one shown on the Submit and map.

837

01:57:02.250 --> 01:57:13.380

Bob Russo: The one shown and submitted map were hung by myself and located by a licensed surveyor from Hackathon associates the ones that were rehang

838

01:57:14.100 --> 01:57:31.410

Bob Russo: For the NCC, the soil scientists were really hung on the same location by the same license surveyor from has Kristen associates on. I think that's adequate assurance that the soils as mapped as delineated by myself.

839

01:57:32.730 --> 01:57:39.090

Bob Russo: Or the same that NCC DD viewed in the field as they were located in rehab by the same license gland survey.

840

01:57:40.800 --> 01:57:44.100

Bob Russo: On the third response in my letter.

841

01:57:45.150 --> 01:57:59.520

Bob Russo: Mr willing says that the NCC, the observations indicated that alluvial soils which are wetland soils were noted outside of the wetland boundary that had been delineated on the preliminary map. And that's a significant concern to him.

842

01:58:00.570 --> 01:58:12.540

Bob Russo: I want to refer back to my earlier statement and indicate that the preliminary map that's being referred to is the one that was from the spring of 2020 not the one that's before the Commission now.

843

01:58:14.460 --> 01:58:17.130

Bob Russo: The use of the term preliminary map indicates that

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01:58:18.570 --> 01:58:41.520

Bob Russo: as was indicated previously based on the meeting that we had Michael client myself the NCC these two soil scientist and town staff, the map holds revised submitted is before you now, and has an animus agreement from those for soil scientists, so that issue has been addressed.

845

01:58:43.110 --> 01:58:44.700

Bob Russo: Response for in my letter.

846

01:58:46.290 --> 01:58:55.470

Bob Russo: M regards NCC these comments regarding our soils and similar Louisville soils on the site typically have lenses of sand and gravel.

847

01:58:57.720 --> 01:59:04.410

Bob Russo: Mr willing says this is an issue where the NCC DD swell scientists had with the applicant soil scientists

848

01:59:05.220 --> 01:59:24.090

Bob Russo: And I would just like to point out that in the same paragraph that Mr dwellings sites, the NCC DD letter says, and I quote, that this comment regarding outcome soils does not affect the delineation and the district concurs with the delineation presented in the eight 720 submission

849

01:59:25.410 --> 01:59:30.930

Bob Russo: That's the one that's currently before the Commission again there's agreement among the four sort of scientists

850

01:59:32.760 --> 01:59:35.370

Bob Russo: If I could have the next slide please, Gary.

851

01:59:40.440 --> 01:59:52.740

Bob Russo: There is, um, there are a couple of areas here that were pointed out by Mike Seguin earlier that show just how different and

852

01:59:54.030 --> 02:00:05.220

Bob Russo: How areas need to be added to the town wide map in order to correctly reflect the conditions in the field that is demonstrated in all of these green areas on the map.

853

02:00:06.240 --> 02:00:10.830

Bob Russo: Are on site field delineation shows a significant amount

854

02:00:11.910 --> 02:00:14.070

Bob Russo: Of area that

855

02:00:15.360 --> 02:00:21.900

Bob Russo: Is under the conditions regulation and is much more specific than the town map.

856

02:00:23.190 --> 02:00:24.840

Bob Russo: If I could have the next slide please, Gary.

857

02:00:28.020 --> 02:00:30.180

Bob Russo: Now, as to the question.

858

02:00:31.200 --> 02:00:36.120

Bob Russo: About use of FEMA mapping as a surrogate

859

02:00:37.350 --> 02:00:38.370

Bob Russo: For soils map.

860

02:00:39.510 --> 02:00:44.790

Bob Russo: That's simply not what's happening here. And I'd like to demonstrate that using this figure.

861

02:00:46.080 --> 02:00:52.260

Bob Russo: Before I discussed this figure, I would like to say that this figure does not have new data on it.

862

02:00:53.130 --> 02:01:05.340

Bob Russo: The lines on this map our lines that were already provided to the Commission in the original some middle. This is merely an overlay of lines that have previously been submitted to clarify a point

863

02:01:07.110 --> 02:01:08.310

Bob Russo: Looking at this map.

864

02:01:09.600 --> 02:01:28.620

Bob Russo: The dashed blue line is the female floodplain as mapped the green line is the limit of field delineated alluvial soils. You can see that they don't match, we are not substituting a FEMA map for onsite soil delineation.

865

02:01:30.030 --> 02:01:31.530

Bob Russo: What we did was take

866

02:01:32.580 --> 02:01:39.570

Bob Russo: The FEMA flood study, which establishes an elevation based on technical calculations.

867

02:01:41.790 --> 02:01:53.370

Bob Russo: We found that that in fact reflected the limit of alluvial soil on the site and using more precise topography that's available, we put that

868

02:01:54.030 --> 02:02:06.600

Bob Russo: On our map and saw that we could completely encompass the Louisville soils on the site using that elevation using that boundary. Again, I want to emphasize that

869

02:02:07.560 --> 02:02:24.510

Bob Russo: The independent review performed by the NCC DD concurs with this delineation and finds that elevation is absolutely a good tool to use in delineating floodplain on the Louisville soils.

870

02:02:27.600 --> 02:02:40.620

Bob Russo: Response six and Mr. Williams letter he refers to the clarification for human altered in human transported soils and Connecticut guidance to delineation of weapons driven by Hydra conditions.

871

02:02:41.610 --> 02:02:49.230

Bob Russo: That's a document that we've attached and included, as Mr Klein noted earlier, wherever appropriate on the site.

872

02:02:51.060 --> 02:03:03.840

Bob Russo: That has been employed the techniques described in that document have been employed much of what's described in that document applies to what Mr client calls. And I also call the web wetteland sores.

873

02:03:04.500 --> 02:03:11.430

Bob Russo: And this document is primarily a tool in addressing areas of wet wetland that have been filled

874

02:03:12.540 --> 02:03:26.250

Bob Russo: And how to deal with those and how to delineate them and it primarily goes to whether there are still a quick conditions in those soils on this site when I perform the delineation I follow the guidance presented in that document.

875

02:03:29.760 --> 02:03:38.580

Bob Russo: In fact, the North Central conservation district concurred with the delineation of the web weapon soils on the site.

876

02:03:40.770 --> 02:03:42.570

Bob Russo: Responsive seven in my letter.

877

02:03:44.070 --> 02:03:52.680

Bob Russo: Deals with Mr dwellings comment about the criteria us to identify alluvial soils and outward soils based on the NCC comments.

878

02:03:53.340 --> 02:04:00.750

Bob Russo: Which say that the presence of sand and gravel does not automatically signify the presence of out wash soils. That's quite true.

879

02:04:01.320 --> 02:04:13.530

Bob Russo: But we were able to establish in numerous places using test pits and hand auger sampling were on the site. In fact, a Louisville soil criteria were met.

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02:04:14.130 --> 02:04:23.280

Bob Russo: And the Louisville soil criteria that we used are those standard criteria that are in soil taxonomy, which has been referred to earlier today.

881

02:04:25.530 --> 02:04:29.250

Bob Russo: If an area was at the scene elevation

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02:04:30.510 --> 02:04:39.330

Bob Russo: As an alluvial soil and yet had lenses of sand and gravel in it. We included it in the Louisville soil mapping and it is mapped as a regular scenario.

883

02:04:41.670 --> 02:04:51.210

Bob Russo: I'd like to address a couple of additional comments that Mr. William made in his second letter to the Commission.

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02:04:54.450 --> 02:05:02.940

Bob Russo: In a couple of places he discusses the need for precise location of wetlands and watercourses

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02:05:04.260 --> 02:05:20.940

Bob Russo: We precisely delineated the wetlands and water courses on this site, what you see is the result of several days and excavation and logging of soils and this is a precise line that also receives on

886

02:05:23.310 --> 02:05:27.120

Bob Russo: concurrence from the to soil scientists that

887

02:05:28.980 --> 02:05:30.660

Bob Russo: Were retained by the Commission.

888

02:05:32.820 --> 02:05:54.750

Bob Russo: And also in Mr. Williams letter he makes reference to a Vons plan of conservation development and discusses flood prone areas. Again, as Mr. Clemens, I'm sorry, as Mr Klein indicated earlier tonight on the town of Avon does have regulations that protect flood prone areas.

889

02:05:58.050 --> 02:06:10.470

Bob Russo: I'd like to move to the very end of Mr dwellings second letter he has two comments. The first is that the applicant soil scientist stated that they had corrected areas of wetland soils.

890

02:06:11.070 --> 02:06:20.730

Bob Russo: Outside of the map area. However, there is no mention of these corrections being completed or verified based on the September 22 letter from the NCC DD

891

02:06:21.570 --> 02:06:33.630

Bob Russo: Well, in fact, that September 22 letter is the verification. It is the letter from the Commission's consultants that say they are in agreement with the corrected map.

892

02:06:35.580 --> 02:06:47.310

Bob Russo: Is second item at the end of the letter says no, mentioned by the applicants in their presentation that their soil scientists and they're reviewing NCC D soil scientist not agreeing on the luteal floodplain.

893

02:06:48.090 --> 02:06:53.670

Bob Russo: A non wetland soil boundary and therefore opting to use the FEMA flood plain elevation as the soil.

894

02:06:54.750 --> 02:07:05.550

Bob Russo: Again, we're not using the FEMA mapping as the boundary. The for soil scientists all agree that based on the field data collected

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02:07:06.330 --> 02:07:20.250

Bob Russo: Which involves extensive borings tested excavations and discovery of the limits of the Louisville soil as well as the tool of elevation, which is endorsed by NCC DD that this is a correct weapon boundary

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02:07:21.420 --> 02:07:24.960

Bob Russo: I'd like to briefly address a couple of comments from Dr. Clemens

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02:07:26.670 --> 02:07:32.010

Bob Russo: He questions repeatedly why there's no development proposal before the Commission.

898

02:07:32.700 --> 02:07:49.320

Bob Russo: There need not be a development proposal before the Commission several municipalities that I work in, such as West Hartford and field in Glastonbury actually prefer that the applicant come in for a Map Amendment before presenting any divulge any development proposal.

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02:07:50.880 --> 02:08:04.560

Bob Russo: As well. It sound planning for anyone seeking to develop to establish the weapon boundary have it approved before they start to compile their site plan so that they can make an appropriate plan.

900

02:08:08.640 --> 02:08:25.890

Bob Russo: Talking about the 500 year flood plain boundary has come up several times. Michael clients going to address that in greater detail later. I will just say that what we're doing in establishing a wetland boundary for this site is using an elevation

901

02:08:26.940 --> 02:08:37.140

Bob Russo: That hundred year flood elevation may not apply on other sites. It happens to work on this one because the soil data supported

902

02:08:37.740 --> 02:08:56.790

Bob Russo: Soil data tell us that closer to the river. Those are Louisville soils and further from the river than that line are nonlinear soils. So it's an elevation line that gives a very accurate depiction of the floodplain in the Louisville soils on the site.

903

02:08:58.110 --> 02:09:02.670

Bob Russo: On there just a couple of other issues that have come up tonight.

904

02:09:06.120 --> 02:09:27.180

Bob Russo: First, I'd like to just talk about what constitutes a weapon impact on I've been working in this field for decades. And it's my opinion that by changing align on a map, you're not creating any weapon impact. There's not the potential for a weapon impact this is defining a resource.

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02:09:28.230 --> 02:09:31.410

Bob Russo: It's not removing weapons from regulation.

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02:09:32.640 --> 02:09:41.640

Bob Russo: It's defining what those weapons are what the boundaries of those weapons are this is done all the time in Connecticut towns.

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02:09:42.660 --> 02:09:52.110

Bob Russo: The mapping that is currently available as town wide mapping in most towns that's available from the NRC s

908

02:09:53.370 --> 02:10:01.860

Bob Russo: Was not intended to be a regulatory boundary for the towns that's indicated by the quote from the Connecticut ICO website that I gave today.

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02:10:03.240 --> 02:10:21.180

Bob Russo: That evolves regulations require mapping from a soil scientist back that up as well. And that we've presented data that shows several

locations on the site where that town wide mapping is incorrect. I think further that point so

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02:10:22.200 --> 02:10:30.150

Bob Russo: I just asked Gary If I could have the last slide, the next slide, there are just a couple of points that I would like to reiterate here and

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02:10:31.980 --> 02:10:45.330

Bob Russo: Essentially what we have is a weapon delineation that is supported by an extensive number of test pits that were performed on the site.

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02:10:46.440 --> 02:10:49.410

Bob Russo: Hundreds of swell auger holes performed on the site.

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02:10:50.460 --> 02:11:03.060

Bob Russo: By to soil science scientists, on behalf of the applicant that was then investigated by the Commission's retained consultants and their conclusion was

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02:11:03.690 --> 02:11:09.990

Bob Russo: That the wetland delineation shown on the blue Fox golf course wetland Map Amendment eight 720 submission

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02:11:10.320 --> 02:11:20.970

Bob Russo: Accurately and optimally represents wetland boundaries and soil conditions observed during the field inspection and follows recommendations professional judgment and conclusions reached in the virtual meeting.

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02:11:22.830 --> 02:11:32.340

Bob Russo: That concludes my rebuttal. I'd be happy to take questions and I know that Michael Klein is prepared to make statements in rebuttal as well. Thank you.

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02:11:34.230 --> 02:11:35.640

Chairman Cliff Thier: Are there any questions.

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02:11:37.590 --> 02:11:40.320

Chairman Cliff Thier: For the previous speaker from any of the Commission members.

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02:11:43.740 --> 02:11:45.870

Chairman Cliff Thier: All right. Alright, I don't think so. And

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02:11:46.860 --> 02:11:48.240

Commissioner Jed Usich: You have something you wish to add

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02:11:48.960 --> 02:11:51.510

Michael Klein: Yes. But first, I'm just going to get a glass of water.

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02:11:57.480 --> 02:11:58.590

Michael Klein: Thank you for your indulgence.

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02:12:01.980 --> 02:12:03.510

Chairman Cliff Thier: Can we trust you, that it's only one

924

02:12:06.120 --> 02:12:06.450

Michael Klein: Um,

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02:12:08.250 --> 02:12:16.140

Michael Klein: I'm going to be editing my rebuttal comments on the fly, to a certain extent because as as the chairman.

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02:12:17.160 --> 02:12:28.740

Michael Klein: Nose and the Commission those in the chair pointed out tonight, but apparently the interviewers did not the the floodplain mapping is not really relevant to this issue. I'm

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02:12:31.440 --> 02:12:43.620

Michael Klein: Going I may stumble, a little bit because I'm doing this on the fly. So I apologize if that's the case, I'm inductor. I'm going to be referring to Dr. Clemens on

928

02:12:44.940 --> 02:12:46.530

Michael Klein: October 30 letter.

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02:12:50.070 --> 02:12:54.840

Michael Klein: He was, he felt he found the David Zacks comments about the

930

02:12:56.580 --> 02:13:00.450

Michael Klein: floodplain mapping. We're confusing the floodplain mapping

931

02:13:01.650 --> 02:13:11.490

Michael Klein: The FEMA flood study the flood insurance rate maps those elevations, they all speak for themselves. Um, I think, the Commission is aware, and I'm

932

02:13:12.540 --> 02:13:28.260

Michael Klein: quite certain that Dr. Clemens is aware that there are circumstances when water will be present on the surface of the ground and maybe even extensive areas on the ground that are not the result of flooding from the nearby river.

933

02:13:32.880 --> 02:13:36.210

Michael Klein: We've all agreed. I think that the

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02:13:39.870 --> 02:13:43.230

Michael Klein: The purpose of this amendment hearing is to

935

02:13:44.400 --> 02:13:47.100

Michael Klein: correct errors in in the map.

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02:13:48.690 --> 02:13:49.020

Michael Klein: And

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02:13:52.380 --> 02:13:52.860

Michael Klein: There's

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02:13:54.270 --> 02:14:05.010

Michael Klein: Repeated reference to the 500 year flood area which is protected on the Avon ones map. Well, the 500 year flood area isn't protected on the Avon wetlands map.

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02:14:07.290 --> 02:14:08.070

Michael Klein: This is a

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02:14:09.420 --> 02:14:14.850

Michael Klein: Licensing statute. If it was a simple matter of if, it's in the wet when

941

02:14:15.960 --> 02:14:23.430

Michael Klein: You can't do anything. And if it's outside the wetland. You can do anything you want your Commission meetings would be a lot shorter my

942

02:14:25.230 --> 02:14:32.820

Michael Klein: Retirement would probably be postponed many years, and we'd all all the people in my business would have a lot less work to do. It's a licensing statute.

943

02:14:34.620 --> 02:14:42.750

Michael Klein: You can fill in a wetland. In fact, when the new bridge was constructed over the Farmington River wetlands were filled, you need to get a permit to do it.

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02:14:43.830 --> 02:14:52.740

Michael Klein: The fact that it's within or without the wetland bound a wetland boundary on a general town map has nothing to do with whether or not

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02:14:53.760 --> 02:14:59.490

Michael Klein: weapons are protected. It's a general guide the exact character, the land.

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02:15:00.540 --> 02:15:10.230

Michael Klein: Applies and I am on a regular basis, called into a consult on matters where people have placed fill in wetlands.

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02:15:11.340 --> 02:15:26.910

Michael Klein: That wasn't on the town map, but was in fact wetlands and they were called in front of a commission for it and enforcement actions were issued so so this is is just erroneous to suggest, I think it's a big giant red herring, that if you change the line on the map.

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02:15:27.930 --> 02:15:30.690

Michael Klein: You're eliminating protection of weapons.

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02:15:36.180 --> 02:15:52.830

Michael Klein: And in fact if if Dr. Clemens and isn't and he acknowledges that he's not a soil scientist. I never said that. He said he was a soil scientist, but by acknowledging that he doesn't know whether those areas are wetlands or not. He only knows what the map shows and the map is incorrect.

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02:15:56.550 --> 02:15:56.910

Michael Klein: And

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02:16:04.470 --> 02:16:09.720

Michael Klein: Unfortunately, Dr. Clemens has clarified his testimony, but that

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02:16:10.860 --> 02:16:26.160

Michael Klein: The theme of that testimony is the central theme is one of the two central themes in the intervening years petition to be granted intervene or status and in their objections to the wetland boundary

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02:16:32.760 --> 02:16:41.070

Michael Klein: As you can see here on on the screen. This is the some quotes from the in black from the intervention petition.

954

02:16:41.670 --> 02:16:54.930

Michael Klein: On the applicant proposes significant amendments to the wetlands and watercourses on the property, but does not accurately delineate wetlands and would likely delineate more wetlands on the property than the applicant that's Mr. Smith's

955

02:16:56.820 --> 02:16:58.920

Michael Klein: Testimony. I guess because he doesn't site.

956

02:17:00.390 --> 02:17:04.020

Michael Klein: a soil scientist for making that making that judgment.

957

02:17:05.040 --> 02:17:06.960

Michael Klein: What do we know we do know that the

958

02:17:08.130 --> 02:17:17.370

Michael Klein: soil scientists that will retained by the town to provide an objective opinion about our work said that the wetland delineation shown

959

02:17:18.720 --> 02:17:30.330

Michael Klein: Accurately and optimally represents wetland boundaries and soil conditions observed during the field inspection and follows recommendations professional judgment and conclusions reached in the virtual meeting.

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02:17:31.770 --> 02:17:37.020

Michael Klein: The intervention petition goes on to say, using current accepted and more conservative methodology.

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02:17:37.500 --> 02:17:51.990

Michael Klein: The female 500 precautionary floodline to identify wetland soils would result in a more accurate delineation of wetlands. I'm the only person I think we've talked about the 500 year FEMA precautionary floodline is Dr. Clemens

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02:17:53.400 --> 02:17:59.880

Michael Klein: He's an outstanding herpetologist, he's a friend of mine. He's a tremendous conservation biologist.

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02:18:00.900 --> 02:18:06.870

Michael Klein: I'm not going to dispute it whether or not he's an expert in resiliency planning that's outside of my area of expertise but

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02:18:08.640 --> 02:18:09.540

Michael Klein: He doesn't have

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02:18:10.650 --> 02:18:18.150

Michael Klein: The ability to make that statement. He said he didn't make that statement. And yet, Mr. Smith uses that as a basis of his

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02:18:19.440 --> 02:18:21.990

Michael Klein: Petition, in fact, Dr. Clemens in his

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02:18:23.040 --> 02:18:27.210

Michael Klein: Late most recent letter said the issue for me is not the delineation line, per se.

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02:18:27.960 --> 02:18:38.100

Michael Klein: But the fact that the 500 year flood area is currently protected as map wetlands and will no longer be protected from development by this amendment to the Avon wetland map well

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02:18:38.970 --> 02:18:52.860

Michael Klein: As the Commission knows your regulations allow you to consider any activity anywhere on the landscape that you can reasonably consider would have an adverse impact on the wetland, whether it's shown on your map or not.

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02:18:55.560 --> 02:18:57.420

Michael Klein: And of course he

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02:18:58.710 --> 02:19:13.740

Michael Klein: There's discussion about moving the town of Avon backwards because under current policy considerations. People are protecting infrastructure to the level of the 500 year flood um it's unfortunate that

972

02:19:17.340 --> 02:19:24.690

Michael Klein: The experts for the intervene or didn't look at the town zoning regulations before they made that statement Avon has been

973

02:19:25.650 --> 02:19:31.560

Michael Klein: It wasn't as a result of climate change as a result of the unusual conditions on the Farmington River.

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02:19:32.070 --> 02:19:51.300

Michael Klein: And the major flood can we're not talking about a small Damn, that's going to get breached in a big flood these dams were designed and Dave's if perhaps can can provide some additional information on that. But these dams were designed to accommodate the flood of record being the

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02:19:52.380 --> 02:19:56.250

Michael Klein: Flood, which was at least equal to A 500 year event.

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02:19:58.020 --> 02:20:00.120

Michael Klein: The town of Avon recognized

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02:20:01.140 --> 02:20:09.210

Michael Klein: That decades ago and has always protected these areas to a level higher than the 500 year flood. Next slide please.

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02:20:14.310 --> 02:20:21.000

Michael Klein: Mr. Smith most recent letter the 28th. He says female mapping cannot be used to delineate wetlands.

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02:20:22.020 --> 02:20:23.550

Michael Klein: We didn't use the FEMA mapping

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02:20:26.610 --> 02:20:31.290

Michael Klein: We use soil criteria supplemented by elevation data and as Bob

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02:20:33.810 --> 02:20:34.440

Michael Klein: Russo.

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02:20:36.300 --> 02:20:37.830

Michael Klein: clearly explained earlier.

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02:20:39.660 --> 02:21:00.240

Michael Klein: Any areas that were at an equal elevation to locations where Louisville soils were found were also included in the delineation because those areas might have been disturbed and the luteal soil characteristics might have been removed by the work that was done to create the golf course.

984

02:21:05.250 --> 02:21:10.950

Michael Klein: And then Mr. Smith Goes on to say that his client not road preservationist um

985

02:21:12.000 --> 02:21:21.480

Michael Klein: Does not endorse the concept of using FEMA mapping, we didn't. But if you did, you should accept a surrogate, and you should adopt a conservative approach is being far more prudent.

986

02:21:23.670 --> 02:21:31.800

Michael Klein: Well, the NCD disagrees, and says that this the map accurately and optimally represents a weapon boundaries.

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02:21:36.060 --> 02:21:38.130

Michael Klein: Last thing. What I'd like to do is just

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02:21:40.080 --> 02:21:41.100

Michael Klein: Go on to a

989

02:21:43.620 --> 02:21:45.480

Michael Klein: Couple of things that came up tonight.

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02:21:48.420 --> 02:21:49.170

Michael Klein: First of all,

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02:21:51.840 --> 02:21:54.330

Michael Klein: There's no question in my mind that

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02:21:57.150 --> 02:21:57.510

Michael Klein: The

993

02:21:58.800 --> 02:22:00.360

Michael Klein: Conduct proposed here.

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02:22:01.710 --> 02:22:14.400

Michael Klein: To change in the wetland boundary is not only is is not reasonably likely to cause unreasonable pollution or impairment of the

wetlands and water courses that are within this Commission's jurisdiction.

995

02:22:15.420 --> 02:22:17.220

Michael Klein: In fact, it won't have any

996

02:22:18.390 --> 02:22:25.560

Michael Klein: Cause any impairment of those resources, um, second thing I'd like to point out is that, um,

997

02:22:28.200 --> 02:22:43.050

Michael Klein: Mr dwelling has as he admitted has never been on the site. He hasn't examine the soils on the site. The only soil scientist that have examined the soils on the site agreed that this delineation is accurate.

998

02:22:47.430 --> 02:22:51.030

Michael Klein: As far as the concept of the doctor Clemens introduced of segmentation.

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02:22:55.380 --> 02:23:01.230

Michael Klein: I'm not sure the Commission even knows what he means by that. That's the idea that if you build

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02:23:02.190 --> 02:23:10.320

Michael Klein: 10 houses. There's no adverse impact. And then if you build 10 more houses, those don't have any more adverse impact. And if you build 10 more of those don't have any more impact, but

1001

02:23:10.590 --> 02:23:23.370

Michael Klein: If you originally had planned to build 30 houses and you've shown that, to the Commission, they might have decided that that did have an adverse impact. Well, this is not a case of segmentation. This is a case of asking to

1002

02:23:26.130 --> 02:23:26.820

Michael Klein: Have the

1003

02:23:27.960 --> 02:23:31.800

Michael Klein: Top, the Commission agree that the town map.

1004

02:23:32.820 --> 02:23:33.570

Michael Klein: Does not

1005

02:23:34.920 --> 02:23:53.190

Michael Klein: Accurately reflect the conditions of the field, the Commission's already tacitly agreed to that, by adopting the regulations that say you need to go out and and map the wetlands in the field, but that that's all we're asking. I'm asking for you to do here. There's no question that

1006

02:23:55.860 --> 02:23:59.130

Michael Klein: Any proposal for use this properties for acquire wetland permit.

1007

02:24:00.510 --> 02:24:12.390

Michael Klein: It's happened every time in the past, over the last has happened at least three or four times over the last 25 or 30 years, in my experience, and that same thing is going to be be the case here.

1008

02:24:21.120 --> 02:24:21.450

Michael Klein: Yes.

1009

02:24:23.790 --> 02:24:35.640

Michael Klein: I'm just, I'm sorry, I'm just looking through there's an awful lot of information that came in here today and I just want to make sure that I've addressed all the technical matters we

1010

02:24:35.940 --> 02:24:39.420

Chairman Cliff Thier: Will have an opportunity if something occurs to me afterwards because

1011

02:24:39.720 --> 02:24:40.110

You're right.

1012

02:24:41.280 --> 02:24:51.810

Chairman Cliff Thier: We're going to keep the public hearing open and certainly the applicant will have an opportunity to add anything, is that that that follow up that second meeting.

1013

02:24:52.110 --> 02:24:55.020

Michael Klein: Sure. Thank you, Miss trimming I'm I have nothing more to add this time.

1014

02:24:55.680 --> 02:24:58.440

Chairman Cliff Thier: But Tony works anything more than you wish to add

1015

02:24:58.980 --> 02:25:01.590

Janet Brooks: Yes, I'll just make a few comments on

1016

02:25:04.560 --> 02:25:12.450

Janet Brooks: One of the paragraphs in the intervention petition. It's paragraph number seven addresses.

1017

02:25:12.900 --> 02:25:15.930

Janet Brooks: The acreage proposed to be removed.

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02:25:15.930 --> 02:25:25.950

Janet Brooks: From regulation and subject to unregulated development and that also echoes what Dr. Clemens said tonight.

1019

02:25:27.030 --> 02:25:37.470

Janet Brooks: That you know we're taking out out from protection and when you take something out from protection that is that is the unreasonable conduct.

1020

02:25:38.700 --> 02:25:41.190

Janet Brooks: So it's not just a matter of moving a line.

1021

02:25:41.520 --> 02:25:54.420

Janet Brooks: So it's just not true in Avon. And so I just want the Commissioners to feel really confident, where it is in your regulations, it's it happens to be at the tail end of the description, the definition of

1022

02:25:55.530 --> 02:26:11.070

Janet Brooks: Wetlands it's 2.1 point x where you Avon has adopted that most protective language, the ad agency may rule that any other activity.

1023

02:26:11.550 --> 02:26:23.010

Janet Brooks: Located within the upland review area or in any other non wetteland non watercourse area. So outside of the opposite and review area.

1024

02:26:23.370 --> 02:26:37.380

Janet Brooks: Is a regulated activity if it finds just skipping a line or two that such activity is likely to impact or effect weapons or watercourses in a substantial and detrimental manner. Thus,

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02:26:38.340 --> 02:26:46.200

Janet Brooks: Everyone should really understand the Avon Commission retains its authority to regulate

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02:26:46.740 --> 02:27:06.180

Janet Brooks: Wherever the activity is if it's has a likely impact on wetlands or work or So tonight, nothing or this process leading up to a vote will not affect the town's authority to protect wetlands and watercourses I think the

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02:27:07.800 --> 02:27:14.670

Chairman Cliff Thier: Week, on behalf of the Commission, I'll just reiterate something I said at the beginning of the meeting that this is

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02:27:15.900 --> 02:27:17.010

Chairman Cliff Thier: Not a

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02:27:18.690 --> 02:27:26.880

Chairman Cliff Thier: Decision on activities. It's not a decision on anything, but whether or not the condition believes that the applicant.

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02:27:27.930 --> 02:27:33.660

Chairman Cliff Thier: The changes that the applicant wishes to make in the town map.

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02:27:34.770 --> 02:27:36.390

Chairman Cliff Thier: All warranted by

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02:27:37.470 --> 02:27:57.780

Chairman Cliff Thier: Concrete findings facts, if the Commission feels that the applicant has met apart burden of proof showed us why the map was wrong. And it's proposals will make it right or accurate, then that's all we're going to be deciding when we take off of nothing, nothing else.

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02:27:58.860 --> 02:28:09.480

Chairman Cliff Thier: No other no other factors will influence us, it will simply be a Is this accurate or is this accurate okay um

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02:28:09.690 --> 02:28:15.240

Janet Brooks: I wanted to address in the intervention petition paragraph.

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02:28:16.500 --> 02:28:25.860

Janet Brooks: suggests a what the feasible imprudent alternatives are and and and why is that notion even come up right because

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02:28:26.190 --> 02:28:26.700

Janet Brooks: This isn't

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02:28:26.730 --> 02:28:29.190

Janet Brooks: A weapons application is it

1038

02:28:29.520 --> 02:28:32.880

Chairman Cliff Thier: Doesn't and I just don't want to repeat what I just said.

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02:28:34.680 --> 02:28:50.520

Chairman Cliff Thier: That is not a criteria that will affect our decision on the map. It has nothing to do with the decision that faces us, which is, is the map correct feasible imprudent alternatives have nothing to do with that decision.

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02:28:51.480 --> 02:28:52.290

Janet Brooks: So under

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02:28:52.620 --> 02:29:10.740

Janet Brooks: The wetlands law. But if, if the Commission votes to allow non road preservation in as an intervene or there is a two step process that the Commission takes on as an additional duty or burden.

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02:29:11.640 --> 02:29:24.120

Janet Brooks: If there's an intervene or in the proceeding. So I just want you to understand, you know, before you go to that point. Next, Next meeting of voting whether or not to allow allow

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02:29:24.900 --> 02:29:42.300

Janet Brooks: nod road preservation in if the Commission votes to allow them in and are in RP as an entertainer two step process one Commission makes a determination of whether this Map Amendment proceeding.

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02:29:43.410 --> 02:29:52.440

Janet Brooks: Is reasonably likely to cause unreasonable pollution impairment or destruction of wetlands and if if you Commissioners.

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02:29:53.160 --> 02:30:05.910

Janet Brooks: Boat. Yes, it does. Yes, it's unreasonable impairment or pollution of the wetlands. Then, then you must make a determination of whether they're a feasible and prudent alternatives.

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02:30:06.840 --> 02:30:19.080

Janet Brooks: And that's where I'm really stuck. How do you have a feasible and prudent alternative to a science driven determination of where the wetlands boundary is

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02:30:19.530 --> 02:30:34.560

Janet Brooks: Again, it's not like you've got a development project and you change the size of the footprint. You move the building from one side of the lot to another, you change. So, so you are going to face problems.

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02:30:35.100 --> 02:30:50.370

Janet Brooks: If you allow the weapons, excuse me, the an RP in as an innovator, because this two step process both parts of it. How are you going to find the unreasonable conduct and what are those feasible and prudent alternatives, so

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02:30:50.790 --> 02:30:53.340

Chairman Cliff Thier: We'll ask our attorney to address that.

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02:30:54.480 --> 02:30:57.510

Chairman Cliff Thier: And I don't know if our attorney is still online.

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02:30:58.890 --> 02:31:04.530

Chairman Cliff Thier: But I'm sure she will read the transcript. If she's not point where she left

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02:31:05.730 --> 02:31:06.720

Chairman Cliff Thier: Your point is

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02:31:08.340 --> 02:31:09.210

Chairman Cliff Thier: A good thank you.

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02:31:10.440 --> 02:31:24.150

Chairman Cliff Thier: So issue, as I understand 20 books Brooks rate is that the language of our regulations or focused on an apple intervenes in the instance of

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02:31:24.930 --> 02:31:26.160

Activity application.

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02:31:27.360 --> 02:31:34.380

Chairman Cliff Thier: But are silent for entertainers in this kind of application, you want to have that correct

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02:31:37.380 --> 02:31:46.620

Janet Brooks: It's actually not in your regulations. It's in the Environmental Protection Act statute that causes this to two step process.

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02:31:46.980 --> 02:31:50.460

Chairman Cliff Thier: With the two step process is

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02:31:51.570 --> 02:31:59.940

Chairman Cliff Thier: Targeted at a activity application and silent on this kind of petition.

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02:32:00.870 --> 02:32:06.900

Kari Olson: So that's our plan that's that's obviously not the interviewers position right

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02:32:07.470 --> 02:32:08.190

Kari Olson: And again,

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02:32:09.360 --> 02:32:17.790

Chairman Cliff Thier: So when we vote will will will certainly debate that and each commission and will have to come to a decision on whether or not

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02:32:19.350 --> 02:32:23.310

Chairman Cliff Thier: He requires what kind of analysis or whether the

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02:32:25.650 --> 02:32:26.370

Chairman Cliff Thier: Status statue.

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02:32:28.830 --> 02:32:39.090

Chairman Cliff Thier: Is Is Is simply silent and leaves us up to our best judgment or this statute gives us specific guidance on this issue.

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02:32:40.200 --> 02:32:43.350

Chairman Cliff Thier: My understanding as Attorney Brooks.

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02:32:43.680 --> 02:33:05.220

Chairman Cliff Thier: Read it is that it is, it didn't occur to whoever wrote the statute that there would be this kind of issue that people wish to be entertainers and so the statute is silent on that it is statute was written only with an activity application in mind.

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02:33:06.390 --> 02:33:08.490

Chairman Cliff Thier: Will have that right attorney Brooks.

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02:33:08.910 --> 02:33:21.270

Janet Brooks: That's that's there and it might even be the reason you wouldn't find that this is conduct for which an intervention is appropriate. Okay. Yes.

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02:33:22.290 --> 02:33:24.510

Chairman Cliff Thier: needs to be clarified and in

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02:33:26.070 --> 02:33:35.160

Chairman Cliff Thier: We will simply be we will certainly consult with our with the town attorney between now in that meeting, and maybe even meet with her to discuss it, but

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02:33:36.570 --> 02:33:38.460

Chairman Cliff Thier: Virtually meet with her to discuss it.

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02:33:39.630 --> 02:33:41.730

Chairman Cliff Thier: Or certainly get her written input.

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02:33:43.620 --> 02:33:53.910

Chairman Cliff Thier: But I understand your position attorney Brooks and you've certainly illuminated a problem for us to, to think about when we do take a vote.

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02:33:54.720 --> 02:34:06.330

Kari Olson: So, so, Chairman there. I just want to reiterate my agreement with attorney Brooks that your first question, when it comes to taking a bite of the intervention is

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02:34:07.020 --> 02:34:18.660

Kari Olson: The question of whether the applicant is proposing conduct that is likely to cause a reasonable pollution impairment or destruction of weapons.

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02:34:19.710 --> 02:34:25.920

Kari Olson: And as you know, my legal opinion is that I'm conduct.

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02:34:27.060 --> 02:34:27.870

Kari Olson: Okay, so

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02:34:29.400 --> 02:34:37.290

Kari Olson: I'm not going to say, I could never envision a situation where a Map Amendment could not cause a problem.

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02:34:37.950 --> 02:34:46.320

Kari Olson: But the issue here is that it's for you to decide what the what's being proposed here is likely to cause

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02:34:46.920 --> 02:35:00.150

Kari Olson: A impairment or pollution of the wallets and so you've, you've heard the experts, you've listened to the rebuttal ultimately for the Commission to decide, my position.

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02:35:01.020 --> 02:35:26.400

Kari Olson: On the legal standpoint as the attorney is that I do not agree absent clear and unequivocal facts that there is an impact or an action or conduct that is directly going to impact the wetlands that the statutes govern a Map Amendment to the wetlands again absent some clear factual

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02:35:28.230 --> 02:35:34.950

Kari Olson: Evidence to establish that there will be a direct impact. So that's my opinion.

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02:35:35.670 --> 02:35:45.630

Kari Olson: Obviously burger doesn't agree with it. It's an attorney Burke's does, it's obviously up to the Commission and the other day to make that decision or they

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02:35:46.080 --> 02:36:00.330

Kari Olson: Do with attorney Brooks, that if you find that the Map Amendment in this case is conduct that is impacting the wildland and is likely to cause an impairment destruction or pollution.

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02:36:00.930 --> 02:36:08.160

Kari Olson: Then you do have to know the next level and determine if there is a feasible and prudent alternative to what is being proposed.

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02:36:08.700 --> 02:36:14.850

Chairman Cliff Thier: Well, I don't want to be too Talmudic here. But if we eliminate

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02:36:17.160 --> 02:36:27.780

Chairman Cliff Thier: A wetland. Let's just make believe it's a little, little circle on the map. And it's not connected to anything else will call it wetland x if we eliminate that wetland.

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02:36:28.260 --> 02:36:42.870

Chairman Cliff Thier: That is certainly detrimental to a wetland, it's, it's more so if whether or not there is the elimination of a wet when I would say if if

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02:36:45.180 --> 02:36:53.460

Chairman Cliff Thier: And I haven't given a lot of thought because attorney books just pointed all this out. But it seems to me that the elimination of a weapon is certainly

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02:36:54.750 --> 02:36:56.700

Chairman Cliff Thier: An impact on the web.

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02:36:57.600 --> 02:37:06.750

Kari Olson: And, and, again, not being a commission member that's one of those those areas where I would say that you might walk a fine line.

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02:37:08.040 --> 02:37:19.050

Kari Olson: Again I, in general, your jurisdiction is overwhelming and watercourses if all of the evidence provided to you, establishes to you.

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02:37:19.860 --> 02:37:34.860

Kari Olson: That there are no weapons and watercourses within the area of being delineated then it's out of your jurisdiction by law. You only have jurisdiction overwhelming and watercourses. So could I envision a situation

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02:37:36.060 --> 02:37:42.540

Kari Olson: And I, again, I'm not thinking with respect to this application could I envision a situation

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02:37:43.080 --> 02:37:57.300

Kari Olson: Where the Commission was presented with a clear watercourse it's not on the map. You saw it on the ground. It was delineated and somebody comes in and says, Let's amend the map and just cut the water course right out of it.

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02:37:58.980 --> 02:38:03.420

Kari Olson: Could you arguably argue in that context that that Map Amendment

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02:38:04.800 --> 02:38:17.430

Kari Olson: Could have a negative impact. I think there's an argument, under those circumstances, but again, whether what's being proposed here actually impacts wellens and watercourses

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02:38:18.060 --> 02:38:29.070

Kari Olson: Is for you to decide. And you obviously have to weigh the experts it presented to you, but I would again say to you that if

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02:38:29.490 --> 02:38:41.340

Kari Olson: What's being proposed here is to carve out areas that have no weapons and watercourses then once you're carving out his areas that you have no jurisdiction over other than within with respect to the upland review.

1101

02:38:44.010 --> 02:38:44.430

Chairman Cliff Thier: But I

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02:38:44.880 --> 02:38:48.210

Janet Brooks: Would I would respond to that or add on to that is

1103

02:38:48.810 --> 02:39:01.320

Janet Brooks: What Mr. Chairman, you meant a reference to one of it eliminated a wetland. So the only way I could see a wetland being eliminated is if you feel it. If you physically feel it. Because if you're saying

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02:39:01.800 --> 02:39:13.860

Janet Brooks: Removed from designation on a map, an area that was previously designated as wetlands, but that our site survey and soil examination shows

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02:39:14.220 --> 02:39:39.750

Janet Brooks: does not match wetland soils. You haven't eliminated a wetland you've corrected your map to accurately reflect the existence or non existence of wetlands. So you're not eliminating by destroying your you are correcting making an accurate map from a general location will map of weapons.

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02:39:40.110 --> 02:39:46.260

Chairman Cliff Thier: Well, I'm going to ask the advocates for both sides of this question in the light of

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02:39:47.370 --> 02:39:58.860

Chairman Cliff Thier: What we said by their opponent opponent advocates this evening to respond to the to that in writing before our next meeting, perhaps sometime in the next two weeks.

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02:40:00.240 --> 02:40:11.760

Chairman Cliff Thier: And each of us will read it and decide how we are persuaded based on what we get. I don't think there's anything more that can be added orally this evening.

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02:40:13.050 --> 02:40:25.890

Chairman Cliff Thier: And so attorney Brooks and attorney Smith in attorney Olsen. We await equally to see what you have to say.

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02:40:26.250 --> 02:40:27.000

But I think

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02:40:28.020 --> 02:40:32.520

Chairman Cliff Thier: I think there's nothing more that needs to be said tonight. I

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02:40:32.580 --> 02:40:52.080

Janet Brooks: Have one final question for the Chairman. I want to make sure that I'm not aware of any outstanding information that a commission member has asked of the applicants to provide for the next meeting. I just want to be certain, there's nothing outstanding that you're waiting from us.

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02:40:52.500 --> 02:41:04.770

Chairman Cliff Thier: Except I don't believe so. But if any of us think of something tomorrow morning while we getting dressed. We will send an email to Mr McKay Hill who can then say that

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02:41:05.790 --> 02:41:09.930

Chairman Cliff Thier: Commission member or the Commission would like the following information.

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02:41:10.980 --> 02:41:17.220

Chairman Cliff Thier: And then we can communicate to you to the applicant and the

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02:41:19.200 --> 02:41:21.450

Chairman Cliff Thier: petitioning intervene or through

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02:41:22.980 --> 02:41:23.940

Chairman Cliff Thier: Mr McHale

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02:41:26.010 --> 02:41:26.370

And will

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02:41:28.020 --> 02:41:35.370

Chairman Cliff Thier: My friends, we have through him, and we can get them right each of you simultaneously.

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02:41:37.410 --> 02:41:38.040

Chairman Cliff Thier: So,

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02:41:38.370 --> 02:41:40.440

Chairman Cliff Thier: If there is nothing else.

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02:41:42.330 --> 02:41:47.130

Chairman Cliff Thier: That is imperative, we here tonight. I'm going to ask

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02:41:48.720 --> 02:42:07.500

Chairman Cliff Thier: All active parties. If you wish to write something to us, it will be put on the public record. We are open to persuasion and we encourage you to make your arguments and writing and we will treat them with respect that they're entitled to

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02:42:09.090 --> 02:42:16.890

Chairman Cliff Thier: Our I'm going to ask if the Commission members have any objection, it will actually is a

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02:42:19.110 --> 02:42:21.900

Chairman Cliff Thier: Mr McKay hell. Is there anything else you wish dead.

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02:42:23.610 --> 02:42:28.260

John McCahill- Town Staff: The only thing we didn't do is we didn't pull the general public for any input tonight. Are we going

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02:42:28.620 --> 02:42:30.300

Chairman Cliff Thier: I only see one hand up.

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02:42:31.830 --> 02:42:43.380

Chairman Cliff Thier: And I asked that person if they will because we're depending on what they say we're going to get responses from both sides. And we're going to go well into 11 o'clock right

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02:42:44.580 --> 02:42:52.260

Chairman Cliff Thier: I see two hands up. And I'm just going to say that we will get to those people at our next meeting. We will keep the the public hearing open

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02:42:55.140 --> 02:43:03.720

Chairman Cliff Thier: And we plenty of time for that because the applicant and the petitioner will not be repeating anything at our next meeting that they've said tonight.

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02:43:04.440 --> 02:43:18.660

Chairman Cliff Thier: And both the applicant and the petitioner have had plenty of opportunities like to make their arguments and their responses to the other side and I don't expect will hear anything more from either side.

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02:43:19.740 --> 02:43:35.400

Chairman Cliff Thier: The soil scientists have have had plenty of opportunity tonight to on both sides to make the statements the attorneys have. And so I don't anticipate anything new at our next meeting. And at our next meeting, we will get to the public.

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02:43:36.510 --> 02:43:39.750

Chairman Cliff Thier: plenty of opportunities to ask questions.

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02:43:40.890 --> 02:43:46.860

Chairman Cliff Thier: Mr Breckenridge, I see that you have a hand up. Oh, that was no you were just

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02:43:48.450 --> 02:43:49.050

Chairman Cliff Thier: Okay.

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02:43:50.610 --> 02:43:58.110

John McCahill- Town Staff: So that, so then if we are done. We need to formalize the continuance of our public hearing with emotion and that date would be December 1

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02:43:58.200 --> 02:44:01.770

Chairman Cliff Thier: Already do will one of the Commissioners make that motion.

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02:44:03.450 --> 02:44:08.040

Chairman Cliff Thier: And this time, Mr Breckenridge is not adjusting his camera he's raising his hand.

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02:44:08.760 --> 02:44:09.420

Yes.

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02:44:11.010 --> 02:44:11.460

Commissioner Robert Breckinridge: I make him.

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02:44:16.110 --> 02:44:18.390

Chairman Cliff Thier: Mr. Bradley when you make a motion, please.

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02:44:19.410 --> 02:44:19.710

Commissioner Robert Breckinridge: I get

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02:44:19.890 --> 02:44:21.180

Commissioner Robert Breckinridge: I make emotion that

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02:44:21.180 --> 02:44:26.430

Commissioner Robert Breckinridge: We send a public hearing to our next meeting, December 1

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02:44:27.210 --> 02:44:28.140

Chairman Cliff Thier: Is there a second

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02:44:29.910 --> 02:44:32.550

Commissioner Jed Usich: Second, or we have two seconds. Okay.

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02:44:33.000 --> 02:44:35.010

Chairman Cliff Thier: And all in favor

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02:44:35.070 --> 02:44:36.780

Chairman Cliff Thier: Say aye. We just raise your hand.

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02:44:37.080 --> 02:44:38.250

Chairman Cliff Thier: I okay

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02:44:40.110 --> 02:44:43.110

Chairman Cliff Thier: And so that has passed. We will continue our public

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02:44:43.170 --> 02:44:43.740

Chairman Cliff Thier: Meeting.

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02:44:44.040 --> 02:44:45.030

Commissioner Jed Usich: On the first

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02:44:45.660 --> 02:44:55.890

Chairman Cliff Thier: Of December and the invitations will be posted and go out and mail electronic mail until everyone can participate, then

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02:44:57.480 --> 02:45:00.960

Chairman Cliff Thier: We are there any other emotions. We need to make this evening john

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02:45:01.260 --> 02:45:06.240

John McCahill- Town Staff: We need to run through the what's what's remaining on the agenda, very quickly, nothing else related to this application.

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02:45:07.140 --> 02:45:11.160

Chairman Cliff Thier: Already well everybody else can go home. If it's nothing to do with this application.

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02:45:18.240 --> 02:45:19.410

Chairman Cliff Thier: opens up a lot of bed.

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02:45:19.830 --> 02:45:25.680

John McCahill- Town Staff: Right. So on the agenda. Just very quickly, we have a pending application its application 767

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02:45:26.490 --> 02:45:31.740

John McCahill- Town Staff: In the note following that application that says that we had tentatively scheduled it for

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02:45:31.770 --> 02:45:37.590

John McCahill- Town Staff: A PUBLIC HEARING ON MONDAY NOVEMBER 16 2020 the applicant.

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02:45:38.220 --> 02:45:41.130

John McCahill- Town Staff: And his engineer have advised us that they're not ready.

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02:45:41.670 --> 02:45:42.420
John McCahill- Town Staff: For that date.

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02:45:42.870 --> 02:45:44.820
John McCahill- Town Staff: And so we're going to discuss a

1164
02:45:45.030 --> 02:45:49.770
John McCahill- Town Staff: Possible date sometime, probably the second week in December for that application.

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02:45:53.100 --> 02:45:56.700
John McCahill- Town Staff: Communication from the public. I assume there isn't any that's not

1166
02:45:58.770 --> 02:46:00.480
John McCahill- Town Staff: There's nothing out there. I assume right now.

1167
02:46:01.500 --> 02:46:04.680
John McCahill- Town Staff: Other business. We have none staff comments I have none.

1168
02:46:05.130 --> 02:46:06.630
Commissioner Jed Usich: We have APPROVAL OF MINUTES.

1169
02:46:07.260 --> 02:46:09.780
Chairman Cliff Thier: Of October 620 20

1170
02:46:10.110 --> 02:46:12.210
John McCahill- Town Staff: We have a regular meeting and the public hearing

1171
02:46:12.900 --> 02:46:15.390
Chairman Cliff Thier: Do we have someone making a motion to approve the

1172
02:46:15.390 --> 02:46:16.020
Commissioner Jed Usich: Minutes are

1173
02:46:16.980 --> 02:46:17.250
There.

1174
02:46:18.900 --> 02:46:19.770
Commissioner Michael R Beauchamp: Any seconds.

1175

02:46:20.760 --> 02:46:24.990

Chairman Cliff Thier: I can do it all in favor of moving those minutes and those two meetings AI.

1176

02:46:26.430 --> 02:46:28.650

Chairman Cliff Thier: And testers as well.

1177

02:46:28.920 --> 02:46:30.480

John McCahill- Town Staff: And we have. I'm sorry.

1178

02:46:31.710 --> 02:46:42.090

John McCahill- Town Staff: We have APPROVAL OF MINUTES FOR OCTOBER 20 2020 which is a special meeting that was a short meeting dealing with the application out on Sheffield lane.

1179

02:46:42.960 --> 02:46:44.340

Commissioner Michael R Beauchamp: I'll make a motion to approve the

1180

02:46:47.490 --> 02:46:49.320

Chairman Cliff Thier: Second. All in favor.

1181

02:46:51.630 --> 02:46:52.380

Chairman Cliff Thier: Okay.

1182

02:46:52.590 --> 02:46:54.900

John McCahill- Town Staff: Our next meeting is December 1 as we know

1183

02:46:54.960 --> 02:46:57.450

John McCahill- Town Staff: 2020 and we need a motion to adjourn.

1184

02:46:59.220 --> 02:47:00.960

Chairman Cliff Thier: Will do make a motion to adjourn.

1185

02:47:01.140 --> 02:47:02.010

Commissioner Michael R Beauchamp: You make a motion.

1186

02:47:02.760 --> 02:47:05.250

Chairman Cliff Thier: As a question you bet with

1187

02:47:05.400 --> 02:47:06.120

Commissioner Michael R Beauchamp: They may be

1188

02:47:06.750 --> 02:47:07.590

Commissioner Jed Usich: Okay, I'm

1189

02:47:07.920 --> 02:47:10.560

Commissioner Michael R Beauchamp: This is about this this application tonight.

1190

02:47:12.600 --> 02:47:12.900

Commissioner Jed Usich: Maybe

1191

02:47:12.960 --> 02:47:15.810

Commissioner Michael R Beauchamp: I don't know how you people feel, but by hopefully we

1192

02:47:16.140 --> 02:47:17.760

Commissioner Michael R Beauchamp: We can conclude this

1193

02:47:17.880 --> 02:47:19.950

Commissioner Michael R Beauchamp: Whole application in a reasonable

1194

02:47:19.950 --> 02:47:21.870

Commissioner Jed Usich: Period of time but

1195

02:47:22.500 --> 02:47:26.910

Commissioner Michael R Beauchamp: How long this, this could basically, in theory, drag on for a while.

1196

02:47:28.260 --> 02:47:28.470

Commissioner Jed Usich: And

1197

02:47:29.010 --> 02:47:32.700

Chairman Cliff Thier: I will do all I can to make sure we finish this up, one way or the other.

1198

02:47:33.540 --> 02:47:37.680

Commissioner Michael R Beauchamp: Okay, that was my concern because even if we deny it, or approve it.

1199

02:47:37.920 --> 02:47:39.750

Commissioner Michael R Beauchamp: Once guy. Good, good, good, good.

1200

02:47:39.870 --> 02:47:41.910

Commissioner Michael R Beauchamp: Drag it out and something

1201

02:47:41.970 --> 02:47:46.200

Commissioner Michael R Beauchamp: Like this is just going to like if it drags out too long is good up Marvel up

1202

02:47:46.290 --> 02:47:47.490

Commissioner Jed Usich: The rest of our needs.

1203

02:47:47.820 --> 02:47:49.410

Chairman Cliff Thier: Which was. I thought I had

1204

02:47:50.100 --> 02:47:51.150

Chairman Cliff Thier: Earlier, and I wanted to

1205

02:47:51.480 --> 02:47:52.680

Commissioner Jed Usich: Maybe give

1206

02:47:53.550 --> 02:47:55.560

Chairman Cliff Thier: Attorney also Nicole and maybe a

1207

02:47:55.590 --> 02:47:56.430

Chairman Cliff Thier: Call also with

1208

02:47:56.760 --> 02:47:57.330

Commissioner Jed Usich: Staff

1209

02:47:57.930 --> 02:48:00.090

Chairman Cliff Thier: To discuss whether or not other

1210

02:48:03.150 --> 02:48:03.780

Commissioner Jed Usich: Other

1211

02:48:03.870 --> 02:48:06.270

Chairman Cliff Thier: boards have speaking

1212

02:48:09.510 --> 02:48:10.500

Chairman Cliff Thier: Yes, please.

1213

02:48:11.790 --> 02:48:12.660

Kari Olson: Yeah, so

1214

02:48:13.320 --> 02:48:13.710

Kari Olson: So what I

1215

02:48:14.250 --> 02:48:15.120

Recommend

1216

02:48:16.500 --> 02:48:16.680

Commissioner Jed Usich: Is

1217

02:48:17.250 --> 02:48:21.000

Kari Olson: You have speaking limits, but the the big thing.

1218

02:48:22.650 --> 02:48:23.880

Kari Olson: Around rules at the start of the

1219

02:48:23.880 --> 02:48:24.690

Kari Olson: Public Hearing

1220

02:48:25.740 --> 02:48:27.810

Kari Olson: This decide sort of halfway through it.

1221

02:48:27.840 --> 02:48:29.220

Kari Olson: That you're suddenly going to limit that

1222

02:48:29.520 --> 02:48:30.420

Kari Olson: We're trying to speak.

1223

02:48:31.560 --> 02:48:40.140

Kari Olson: Because then they're going to think that they're being singled out. So what I always recommend is you give. And again, this doesn't apply to the

1224

02:48:40.140 --> 02:48:40.740

Applicant

1225

02:48:41.850 --> 02:48:42.180

Kari Olson: But

1226

02:48:43.800 --> 02:48:45.420

Kari Olson: You give any member of the public who

1227

02:48:45.420 --> 02:48:49.230

Kari Olson: Was seeking to speak a time frame a time limit and you time it

1228

02:48:50.220 --> 02:48:51.420

Kari Olson: You tell everybody at the

1229

02:48:51.420 --> 02:48:52.080

Kari Olson: Outset

1230

02:48:52.500 --> 02:48:53.010

Kari Olson: That you

1231

02:48:53.280 --> 02:48:55.350

Kari Olson: read everything record everybody's up to

1232

02:48:55.350 --> 02:48:56.850

Kari Olson: Date that

1233

02:48:57.870 --> 02:48:59.880

Kari Olson: If anybody in the audience.

1234

02:49:00.150 --> 02:49:00.780

Commissioner Jed Usich: Simply

1235

02:49:01.020 --> 02:49:04.470

Commissioner Jed Usich: Wants to agree with the House who is broken.

1236

02:49:05.100 --> 02:49:09.090

Kari Olson: That they just simply say they agree if Mr. X.

1237

02:49:10.470 --> 02:49:11.370

Kari Olson: Rather than have

1238

02:49:12.660 --> 02:49:14.580

Kari Olson: Here the same arguments over again.

1239

02:49:15.900 --> 02:49:20.820

Kari Olson: And. And then what I do is if you limit the time

1240

02:49:21.630 --> 02:49:24.030

Commissioner Jed Usich: And I met don't want

1241

02:49:24.510 --> 02:49:29.070

Kari Olson: Visual you've denied somebody a full opportunity to what I always say is

1242

02:49:29.460 --> 02:49:30.180

Commissioner Jed Usich: If after

1243

02:49:30.210 --> 02:49:31.170

Kari Olson: Everybody's had a

1244

02:49:31.800 --> 02:49:32.820

Commissioner Jed Usich: Big for their three

1245

02:49:32.820 --> 02:49:37.320

Kari Olson: minutes, five minutes, whatever it is, we will allow you to come back up.

1246

02:49:38.100 --> 02:49:39.450

Kari Olson: And what's good about

1247

02:49:39.600 --> 02:49:41.160

Kari Olson: Sending out the ground rules from

1248

02:49:41.160 --> 02:49:42.030

Kari Olson: the get go.

1249

02:49:42.270 --> 02:49:44.880

Kari Olson: And you know, we don't want to hear the same thing over and over

1250

02:49:45.300 --> 02:49:45.840

We're gonna

1251

02:49:47.130 --> 02:49:49.380

Kari Olson: Let you come back if you

1252

02:49:50.340 --> 02:49:50.580

Kari Olson: Just

1253

02:49:50.610 --> 02:49:51.750

Kari Olson: Say you agree with somebody else.

1254

02:49:52.590 --> 02:49:54.480

Kari Olson: It makes it really hard for that.

1255

02:49:54.480 --> 02:49:55.230

Commissioner Jed Usich: Person.

1256

02:49:55.980 --> 02:49:57.240

Kari Olson: To stand back up.

1257

02:49:57.390 --> 02:49:58.620

Kari Olson: For the second time.

1258

02:49:59.040 --> 02:49:59.730

Kari Olson: And start

1259

02:50:00.150 --> 02:50:01.620

Kari Olson: Hashing things that have already been

1260

02:50:01.620 --> 02:50:06.510

Kari Olson: Said, at least now without looking like a jerk, right, they're not going to be able to rehash

1261

02:50:06.510 --> 02:50:07.950

Kari Olson: Everything that

1262

02:50:08.460 --> 02:50:11.460

Kari Olson: They may even be deterred from getting up at all.

1263

02:50:12.480 --> 02:50:13.470

Commissioner Jed Usich: And saying anything.

1264

02:50:13.830 --> 02:50:17.370

Kari Olson: If they've heard what everybody else has to say so.

1265

02:50:17.790 --> 02:50:18.240

I'm

1266

02:50:19.680 --> 02:50:30.690

Kari Olson: Totally rich with the requirements of the female of Information Act it comports with due process requirements. You're not denying anybody the opportunity, you're just asking that they respond

1267

02:50:31.890 --> 02:50:32.190

Kari Olson: Well,

1268

02:50:33.510 --> 02:50:34.710

Kari Olson: And I have found it works.

1269

02:50:34.950 --> 02:50:35.190

Chairman Cliff Thier: Well,

1270

02:50:36.150 --> 02:50:37.530

Commissioner Jed Usich: Thank you. Yeah.

1271

02:50:37.950 --> 02:50:43.920

Chairman Cliff Thier: Maybe you talk to specifics tomorrow in terms of how much time that he will other towns do

1272

02:50:43.980 --> 02:50:44.970

Chairman Cliff Thier: John whenever

1273

02:50:45.510 --> 02:50:47.190

Chairman Cliff Thier: Whatever your thoughts are two

1274

02:50:47.520 --> 02:50:56.130

John McCahill- Town Staff: We had set out. We said set out your earliest feature recommendation for participants to keep it to less than five minutes. So we didn't have a lot of public participation.

1275

02:50:56.940 --> 02:50:58.020

Chairman Cliff Thier: But also the

1276

02:50:58.410 --> 02:51:00.000

Chairman Cliff Thier: The applicant, I think.

1277

02:51:00.030 --> 02:51:00.870

Commissioner Jed Usich: We need to have it.

1278

02:51:01.110 --> 02:51:03.570

Chairman Cliff Thier: A time limit. Also, especially with bottles.

1279

02:51:06.090 --> 02:51:13.680

Chairman Cliff Thier: I think I heard, and then some of the applicant were well on both sides. They were just repeating themselves.

1280

02:51:14.880 --> 02:51:18.390

Chairman Cliff Thier: And I didn't want to say, hey, you're repeating yourself.

1281

02:51:19.980 --> 02:51:21.540

Chairman Cliff Thier: But that's what was going on.

1282

02:51:22.590 --> 02:51:23.220

Chairman Cliff Thier: And

1283

02:51:25.170 --> 02:51:25.710

Chairman Cliff Thier: So,

1284

02:51:26.040 --> 02:51:27.390

Kari Olson: It's harder.

1285

02:51:27.420 --> 02:51:28.470

To limit the time

1286

02:51:31.170 --> 02:51:32.850

Chairman Cliff Thier: Is giving us everything in

1287

02:51:32.850 --> 02:51:35.580

Chairman Cliff Thier: Writing everything should be in writing.

1288

02:51:36.060 --> 02:51:38.940

Chairman Cliff Thier: Out, we can just say, give us your best shot.

1289

02:51:38.970 --> 02:51:40.920

Chairman Cliff Thier: For five minutes.

1290

02:51:41.280 --> 02:51:51.660

Chairman Cliff Thier: To tell us what the most important things in your written. We're going to read everything they give us. So our to see, it's not like we haven't read

1291

02:51:52.590 --> 02:51:55.830

Chairman Cliff Thier: Them and say give us. You got five minutes to give us the most

1292

02:51:55.830 --> 02:51:57.870

Chairman Cliff Thier: Important argument you have

1293

02:51:59.610 --> 02:52:07.740

Chairman Cliff Thier: And if that's enough for a Supreme Court US Supreme Court attorneys. It's got to be enough for

1294

02:52:09.780 --> 02:52:12.270

Chairman Cliff Thier: Avon wetlands Commission proceeding.

1295

02:52:13.080 --> 02:52:20.940

Kari Olson: Clarify agree with you today. Sam, where I would, I would say to an applicant that's going on and you know droning on and on.

1296

02:52:21.240 --> 02:52:22.410

Commissioner Jed Usich: Listen, we've

1297

02:52:22.410 --> 02:52:23.940

Kari Olson: Received this in writing, we've read

1298

02:52:23.940 --> 02:52:28.350

Kari Olson: It, we understand what your position is, is there anything new. You want to ask

1299

02:52:29.010 --> 02:52:30.690

Kari Olson: And that will help push them along

1300

02:52:31.170 --> 02:52:34.470

Kari Olson: I'd be a little concerned about literally cutting them off.

1301

02:52:35.670 --> 02:52:37.980

Kari Olson: Without without, you know,

1302

02:52:38.850 --> 02:52:41.610

Kari Olson: giving them an opportunity to summarize or

1303

02:52:41.760 --> 02:52:44.760

Chairman Cliff Thier: Conclude well like what I could just say is you ever

1304

02:52:44.790 --> 02:52:48.030

Chairman Cliff Thier: You have another two minutes to go, I'm

1305

02:52:48.540 --> 02:52:58.590

Chairman Cliff Thier: Just please keep, keep your own eye on the clock. I don't want to cut off your microphone. But to be fair, each side is going to get five minutes or six minutes.

1306

02:52:59.100 --> 02:53:09.540

Chairman Cliff Thier: To speak. And if we give you more time than we've got to give everybody else more time and then the meeting gets out of hand entirely like I'm afraid it didn't receive it.

1307

02:53:10.860 --> 02:53:15.000

Kari Olson: I don't feel good out of hand, Cliff. I thought you kept a really good, tight rein on it.

1308

02:53:15.570 --> 02:53:15.900

Well,

1309

02:53:18.000 --> 02:53:18.960

John McCahill- Town Staff: There's a lot of information.

1310

02:53:19.890 --> 02:53:21.300

Kari Olson: There is a lot of information.

1311

02:53:22.020 --> 02:53:23.040

Commissioner Jed Usich: But I'm just gonna, I'm just

1312

02:53:23.040 --> 02:53:24.750

Kari Olson: Gonna against a clip I would be

1313

02:53:25.320 --> 02:53:25.800

Kari Olson: I would be

1314

02:53:25.980 --> 02:53:27.600

Commissioner Jed Usich: cautious about

1315

02:53:27.840 --> 02:53:28.860

Commissioner Jed Usich: Off the applicant.

1316

02:53:28.950 --> 02:53:29.460

Kari Olson: I think

1317

02:53:29.550 --> 02:53:30.360

Commissioner Jed Usich: Are ways

1318

02:53:30.930 --> 02:53:32.220

To politely.

1319

02:53:34.830 --> 02:53:41.280

Kari Olson: Suggest to them that they're droning but um I would be I would be careful to shut them off.

1320

02:53:41.400 --> 02:53:41.880

Well, yes.

1321

02:53:43.170 --> 02:53:44.370

Chairman Cliff Thier: We need any

1322

02:53:44.640 --> 02:53:45.990

Commissioner Jed Usich: Or presentation.

1323

02:53:46.260 --> 02:53:47.430

Chairman Cliff Thier: Can we simply say

1324

02:53:47.490 --> 02:54:01.920

Chairman Cliff Thier: We're going to make a decision based on what's in writing, if we have any questions for you. We will ask you those questions based on what you gave us in writing, but we don't need to hear. We don't need to hear you reading

1325

02:54:02.790 --> 02:54:04.500

Commissioner Jed Usich: With basically if you put it down and

1326

02:54:04.500 --> 02:54:11.850

Chairman Cliff Thier: Writing, then all you're doing is reading what you've already given us. Why can't we just say no or presentation.

1327

02:54:12.900 --> 02:54:15.240

Kari Olson: You know, I agree with you got again.

1328

02:54:15.600 --> 02:54:16.290

Kari Olson: The way I would

1329

02:54:16.410 --> 02:54:17.460

Commissioner Jed Usich: Do it is to say

1330

02:54:17.670 --> 02:54:18.690

Kari Olson: Received that in

1331

02:54:19.440 --> 02:54:21.210

Commissioner Jed Usich: Writing have anything new to

1332

02:54:21.210 --> 02:54:22.980

Kari Olson: Add and if they keep

1333

02:54:23.100 --> 02:54:24.150

Kari Olson: Going on.

1334

02:54:24.510 --> 02:54:33.420

Kari Olson: It makes them look like an idiot for not listening to you.

But the notion of a public hearing is the idea that the public, not just

1335

02:54:33.600 --> 02:54:43.770

Chairman Cliff Thier: Let the public do that. And what I'm just saying

for the applicant and the opponent, the interviewers, the Petitioners we have

1336

02:54:45.180 --> 02:54:51.810

Chairman Cliff Thier: All of this. Yeah. And we've been getting all of this for three meetings. Now, or if

1337

02:54:53.430 --> 02:54:59.190

Chairman Cliff Thier: There's if they haven't put it in a document that we can read and digest.

1338

02:55:00.840 --> 02:55:07.350

Chairman Cliff Thier: Then, then they haven't done their job and that's their problem. I don't think more I think about it. Now, I don't think

1339

02:55:07.560 --> 02:55:09.630

Chairman Cliff Thier: There's anything that

1340

02:55:09.690 --> 02:55:21.210

Chairman Cliff Thier: They shouldn't be telling us that they haven't put it in writing already so maybe we don't allow them to make any more oral presentation, they can answer questions from the public.

1341

02:55:23.730 --> 02:55:26.220

Chairman Cliff Thier: But that should be it. I think that the next meeting.

1342

02:55:26.670 --> 02:55:28.800

Kari Olson: So, so I agree with you. I said, the next

1343

02:55:28.800 --> 02:55:29.490

Kari Olson: Meeting, but

1344

02:55:29.520 --> 02:55:31.620

Kari Olson: I was just talking in generalities.

1345

02:55:32.250 --> 02:55:34.590

Kari Olson: I would be loath to shut off the applicant.

1346

02:55:34.770 --> 02:55:36.270

Kari Olson: At a public hearing for

1347

02:55:36.270 --> 02:55:47.970

Kari Olson: Making an oral presentation of what their project is about. And that's because the public hearing as much as it guides the Commission, it's for the public to right so

1348

02:55:48.420 --> 02:55:49.620

Commissioner Jed Usich: So we have to keep in

1349

02:55:49.620 --> 02:55:50.700

Commissioner Jed Usich: Mind that when you run

1350

02:55:50.700 --> 02:55:54.750

Kari Olson: A PUBLIC HEARING. It's none of the public can become informed.

1351

02:55:55.140 --> 02:55:55.680

Kari Olson: About what

1352

02:55:56.820 --> 02:55:58.470

Commissioner Jed Usich: We've had to

1353

02:55:58.530 --> 02:55:59.700

Chairman Cliff Thier: public hearings with a

1354

02:55:59.700 --> 02:56:00.150

Kari Olson: Pillow I

1355

02:56:01.860 --> 02:56:13.380

Kari Olson: Bought this application cloud general in general, I would be I would be loath to restrict the applicant for making a full presentation at the outset of the public hearing

1356

02:56:14.670 --> 02:56:14.850

All

1357

02:56:15.870 --> 02:56:16.200

Chairman Cliff Thier: Right.

1358

02:56:18.000 --> 02:56:21.210

Chairman Cliff Thier: All the documents are online available to the public also

1359

02:56:21.240 --> 02:56:24.030

Chairman Cliff Thier: It's not like anything is being concealed.

1360

02:56:24.540 --> 02:56:27.150

Chairman Cliff Thier: So in terms of education of the public.

1361

02:56:28.770 --> 02:56:32.640

Chairman Cliff Thier: That's available. I don't see why it has to be an oral presentation.

1362

02:56:34.260 --> 02:56:35.610

Chairman Cliff Thier: They can go online to the

1363

02:56:35.610 --> 02:56:37.590

Commissioner Jed Usich: Website and everything is their

1364

02:56:37.860 --> 02:56:39.570

Chairman Cliff Thier: Talent staff, make sure everything is

1365

02:56:39.570 --> 02:56:40.650

Chairman Cliff Thier: Posted quickly.

1366

02:56:41.700 --> 02:56:43.890

Chairman Cliff Thier: So, nothing's being concealed from the public.

1367

02:56:44.700 --> 02:56:46.890

Commissioner Jed Usich: That's something that we've only been doing since COPPA

1368

02:56:46.920 --> 02:56:47.460

John McCahill- Town Staff: Time, though.

1369

02:56:48.270 --> 02:56:51.630

Chairman Cliff Thier: Okay, well, good times. Gonna be with us for a while.

1370

02:56:53.640 --> 02:56:57.090

Kari Olson: I understand what you're saying. Cliff. I'm just saying I you know

1371

02:56:58.140 --> 02:57:00.810

Chairman Cliff Thier: We can all think about it and come into each other.

1372

02:57:01.680 --> 02:57:02.220

Commissioner Jed Usich: John

1373

02:57:02.700 --> 02:57:03.690

Kari Olson: I have all of

1374

02:57:04.320 --> 02:57:06.660

Kari Olson: Your admonishment that they

1375

02:57:06.660 --> 02:57:08.610

Kari Olson: Should not start reiterating things they've

1376

02:57:08.610 --> 02:57:09.600

Kari Olson: already entered

1377

02:57:10.110 --> 02:57:11.190

Kari Olson: But I do feel that the

1378

02:57:11.190 --> 02:57:12.420

Kari Olson: Applicant should be allowed.

1379

02:57:12.420 --> 02:57:13.890

Kari Olson: To present their full

1380

02:57:14.610 --> 02:57:15.450

Kari Olson: Project

1381

02:57:15.810 --> 02:57:17.370

Kari Olson: At the outset of a public hearing

1382

02:57:17.400 --> 02:57:18.930

Kari Olson: Based on the fact that it is

1383

02:57:19.230 --> 02:57:21.450

Kari Olson: A public hearing for the benefit of the public.

1384

02:57:22.800 --> 02:57:25.020

Chairman Cliff Thier: This application with done with the outset.

1385

02:57:25.200 --> 02:57:26.160

Chairman Cliff Thier: Yes, you're

1386

02:57:26.190 --> 02:57:26.430

Kari Olson: Right.

1387

02:57:26.910 --> 02:57:27.750

Kari Olson: You're right, with this.

1388

02:57:28.770 --> 02:57:30.450

Kari Olson: You're correct. I was talking

1389

02:57:32.070 --> 02:57:33.720

Commissioner Jed Usich: You asked me a general question.

1390

02:57:33.960 --> 02:57:35.370

Kari Olson: They want you

1391

02:57:36.420 --> 02:57:37.920

Kari Olson: And that's what I was addressing

1392

02:57:38.970 --> 02:57:40.920

John McCahill- Town Staff: This whole conversation should be

1393

02:57:41.010 --> 02:57:42.570

Commissioner Jed Usich: General, okay.

1394

02:57:42.630 --> 02:57:43.200

Well, are we

1395

02:57:45.120 --> 02:57:46.380

Chairman Cliff Thier: Do we have a motion.

1396

02:57:46.410 --> 02:57:47.520

Chairman Cliff Thier: For a German

1397

02:57:49.590 --> 02:57:49.920

Commissioner Jed Usich: Yes.

1398

02:57:50.160 --> 02:57:52.800

Chairman Cliff Thier: We'll make that motion. Bless you.

1399

02:57:53.100 --> 02:57:53.490

Chairman Cliff Thier: We have

1400

02:57:57.030 --> 02:57:57.570

Chairman Cliff Thier: Second,

1401

02:57:59.220 --> 02:58:00.270

All in favor.

1402

02:58:06.510 --> 02:58:07.500

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1403

02:58:11.700 --> 02:58:12.600

Be able to attend.

1404

02:58:14.580 --> 02:58:15.720

John McCahill- Town Staff: It's virtual it's easy.

1405

02:58:16.050 --> 02:58:16.530

Chairman Cliff Thier: No, I know.

1406

02:58:17.190 --> 02:58:17.850

Commissioner Michael R Beauchamp: Take care. Good.

1407

02:58:18.060 --> 02:58:18.840

Night. All right.