

Missoula Board of County Commissioners

PUBLIC MEETING MINUTES COVER SHEET



THURSDAY, AUGUST 06, 2024 – 2 PM

Hybrid meeting – Missoula County Courthouse Annex Sophie Moiese
Room/Microsoft Teams

[Click here to view the meeting recording.](#)

Time stamps (in green) correspond to meeting recording above. Please click to
the time stamps listed to view a particular item in the meeting.

ATTENDANCE:

Planning and Zoning Commission Present:

Tyler Gernant
Shane Stack
Dave Strohmaier
Juanita Vero
Josh Slotnick

Commissioners Present:

Chair David Strohmaier
Commissioner Josh Slotnick
Commissioner Juanita Vero

Staff Present:

Cheryl Hartman, Administrative Assistant, Commissioners' Office
Annie Cathey, Lead Administrative Assistant, Commissioners' Office
Chris Lounsbury, Chief Administrative Officer, Missoula County
Kyla Lehnerz, Office Administrator, Lands and Communities
Allison Franz, Supervisor, Communications
Elisha Buccholz, Equity Coordinator, Commissioners' Office
Jennie Dixon, Planner, Planning, Development, and Sustainability
Carey Powers, Communications Coordinator, Communications
Alli Kane, Climate Action Coordinator, Planning, Development, and Sustainability
Chet Crowser, Director, Lands and Communities
Randy Arnold, Director, Lands, Culture, and Recreation
Shane Stack, Director, Public Works
Andrew Hagemeier, Director, Community and Economic Development

1. **CALL TO ORDER** *[Time stamp – 0:12]*
2. **PLEDGE OF ALLEGIANCE** *[Time stamp – 0:22]*

3. LAND ACKNOWLEDGEMENT [Time stamp – 0:23]

Missoula County acknowledges that this event takes place in the aboriginal territories of the Salish and Kalispel people.

4. PUBLIC ANNOUNCEMENTS [Time stamp – 0:53]

- a. Closed Captioning
- b. Western Montana Fair Week
- c. Close Bauer Grandstand/ Arena Dedication

5. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA [Time stamp – 3:05]

6. CURRENT CLAIMS LIST [Time stamp – 03:35]

Claims received as of July 24, 2024 to July 26, 2024 by the Commissioners' Office total \$828,958.71.

7. HEARINGS (Planning and Zoning Commission)

a. Western Materials Gravel Pit Use Variance [Time stamp – 04:07]

Jennie Dixon, Planner, Planning, Development, and Sustainability

Tyler Gernant moved to recommend approval of the Request for a Use Variance in Zoning district #40 to allow the existing legal nonconforming gravel operation to expand onto parcels legally described as Cos #5565, Parcels B and CCOS #3935.

The South half of the northwest quarter of the South half, the north half of the southwest quarter of the southwest quarter, and the South half of the southwest quarter of the southwest quarter. Section 23, Township 11 N, Range 20 W.

Based on the application, the findings of facts and conclusions of law found in the staff report and public comment and other information submitted for consideration prior to and at public meetings, subject to the conditions of approval as shown in the August 6th memo as amended for Sections 1J and 1K.

Shane Stack seconded.

[Motion Passed 5-0.]

8. HEARINGS (BCC)

a. Western Materials Gravel Pit Use Variance [Time stamp – 2:36:04]

Commissioner Vero moved to approve the request for a use variance in ZD #40 to allow the existing legal non-conforming gravel operation to expand onto parcels legally described as Certificate of Survey 5565 parcels and B&C Certificate of Survey 3935 in the southwest half of the northwest quarter of the southwest half, the north half of the southwest quarter of the southwest quarter in the South half of the southwest Quarter. SW Quarter Section 23, Township 11 N Range 20 W, Based on the application, the findings of fact and the conclusions of law found in the Staff Report and public comment and other informed submitted and other information submitted for consideration prior to and at public meetings, subject to the conditions of approval as shown in the August 6th, 2024 memo and as amended, deleting second sentences of conditions #1J and #1K.

Commissioner Slotnick seconded.

[Passed 3-0]

[Letter 2024-177 sent to Jamie Erbacher, WGM Group on October 31, 2024]

9. OTHER BUSINESS

[None]

10. ADJOURN

Chair Strohmaier – Called the meeting to final adjournment at 4:36 p.m.

BCC Public Meeting August 22, 2024 – Transcription

This transcription was produced by transcription software. There may be discrepancies between this transcription and meeting dialogue. You can view the recording of the meeting on the county's YouTube channel: <https://www.youtube.com/c/missoulacounty> or contact the commissioners' office to obtain a copy.

Dialogue in the transcription attributed to "Sophie Moiese Room" is for all speakers that attended the meeting in person. Attendees that participated virtually are labeled individually.

0:12

All right, welcome everyone to our special meeting of the Missoula Board of County Commissioners today, this Tuesday, August 6th.

0:22

Please stand and join me in the Pledge of Allegiance.

0:23

Pledge allegiance to the flag of the United States of America, to the Republic for and nation under God will liberty and justice for all.

0:43

Zowa County acknowledges that this event today takes place in the Aboriginal territories of the Salish and Kalispell people.

0:53

Cheryl, would you like to share any public announcements with us today?

0:58

Hello, everyone.

0:58

If you are joining us for this meeting virtually today, instructions for closing, turning on, closed captioning are on your screen.

1:05

If you are joining us in person, we'll have closed captioning on all the screens here in the Sophie Louise room.

1:11

There will be an opportunity to speak during the meeting for public comment virtually and in person.

1:16

We ask that all speakers today speak slowly and clearly.

1:19

This helps with the accuracy of the closed captioning if you are on Microsoft Teams.

1:24

If you would like to speak when discussion has been open for public comment, we ask that you use the Raise Hand feature.

1:29

This is the small hand button at the top of your team screen.

1:33

If you're calling in on the phone, you'll need to hit *5 to raise your hand.

1:37

Once called upon, you'll need to hit *6 to unmute.

1:40

If you have any questions during the meeting, let me know.

1:42

We also have assisted listening devices available.

1:47

Thank you, Cheryl.

1:48

And for those of us, those of you joining online or in the room and cannot see the small placards on the front of the the diocese here, I'm Dave Strohmeier, County Commissioner.

2:00

I'm joined by commissioners Josh Slotnick and Juanita Varro.

2:03

And I'd also like to announce and remind folks that this is the week of the Western Montana Fair.

2:10

So if you get a chance, it opens today.

2:12

Head on out to the fairgrounds.

2:14

We will be dedicating the brand new Klaus Bauer Arena later this afternoon.

2:21

So check out year Fairgrounds and the Western Montana Fair, right?

2:30

OK, as probably all of you know, I hope you know, we only have one agenda item, 1 action item today and that is taking up and you'll hear more about this shortly, but taking up yet again the Western materials gravel pit use variance proposal.

2:49

If you're here either in the room, Sophie Moie's room in the Missoula County Courthouse or joining us online and want to comment on that item, please hold your comments until the appropriate time.

3:00

More instructions will be follow forthcoming on that topic.

3:05

But if you have any public comment on anything else, hopefully within the purview of the Missoula Board of County Commissioners, now is your opportunity.

3:13

So if you're in the room and would like to offer non agenda public comment, please come forward Now if you're online and would like to offer public comment on any item not on the agenda, please use the raise hand function and we will call on you in the order in which you raise your hand.

3:30

Anyone would like to comment?

3:35

OK Claims received as of July 24th, 2024 through July 26th, 2024 by the Commissioner's Office total \$828,958.71.

3:50

As we've said many times before, if you want to see what the actual expenditures and claims are, go to the electronic version of the agenda and click on the link and you can drill down into those claims.

4:04

We have one item today before us.

4:06

This is the Western Materials gravel pit use variance.

4:12

I'll just give a few introductory instructions for all of us and reminders for all of us and then hand it over to Jenny Dixon to offer a staff report update.

4:23

So we will begin first by recessing the Board of County Commissioners, that's the three of us.

4:33

And I would like to call to order a meeting, a continued public hearing, I believe the 5th perhaps of the Missoula Planning and Zoning Commission.

4:45

We're going to begin this public hearing and the next one of the Board of County Commissioners with a staff report.

4:54

This will be followed by an opportunity for the applicant to make any additional comments.

5:00

We're going to give 10 minutes to the applicant.

5:03

That will be followed by 10 minutes for the representative of the Carlton Protection Trust, Mr.

5:10

Coppice.

5:11

That would be you, presumably.

5:14

And that will be followed by three minutes of public comment per speaker.

5:20

I do have these small hourglasses or three minute glasses and we will be strictly adhering to the three minute rule today to make sure everyone has a chance to speak.

5:32

And then we get out of here in a an appropriately length period of time after public comment and one bite at the apple folks, you're going to have 3 minutes each and that's it.

5:46

No repeat customers today.

5:48

After public comment and the public hearing is closed.

5:52

We will then, as the Planning and Zoning Commission, have an opportunity for questions and deliberation and will then, at its discretion, take action today by way of making a recommendation to the Board of County Commissioners.

6:10

At that time, we will adjourn the Planning and Zoning Commission and reconvene as the Missoula Board of County Commissioners.

6:19

And I get it, this is a little funky and odd and that the County Commission is on both of these bodies, but nonetheless, that is the process laid out in state law.

6:29

We will reconvene as the Board of County Commissioners.

6:33

We will then have the opportunity for another round of public comment.

6:38

I would encourage folks either initially or in that second round of public comment to please do not repeat simply what other folks are saying or if you have offered the identical public comment in one of the four previous public hearings.

6:53

There's no need to say the exact same thing.

6:56

We have your comments, we've reviewed them.

6:59

We have them on record.

7:01

Following that second round of public comment before the Board of County Commissioners, we will close the public hearing.

7:08

We will have an opportunity for questions among the three commissioners.

7:11

We will deliberate and then we will render a decision today and take action on this item.

7:19

And I think that exhausts all of the housekeeping items I can think of.

7:23

And I will turn it over to Jenny Dixon to offer staff report update.

7:28

Jenny, thank you very much.

7:32

This is, as Dave said, the fifth public hearing on a variance in ZD 40 for Western Materials gravel operation.

7:41

The prior public hearings have taken place over the course of the last six months.

7:48

The variance criteria that you'll be evaluating today for such a request.

7:56

Jenny, I don't know if other folks are picking it up.

7:59

There's something wrong with that microphone.

8:01

I think.

8:01

Same with yours.

8:04

Something's wrong.

8:05
OK.

8:05
Yep.

8:05
Just walk right in.

8:08
Oh, like that.

8:12
OK.

8:13
So sorry, folks for the issues with the technology.

8:17
Go, go ahead, Jenny.

8:19
You bet.

8:21
So the variance criteria you'll be evaluating this request against are the three that we've listed previously.

8:27
I just for your to remind you they are that it will not be contrary to the public interest that there are special conditions and a little enforcement of the of the regulations will result in an unnecessary hardship.

8:46
I'm just going to briefly remind everybody of the of the current situation, the request and that and the possible outcomes.

8:54
So as you know, 66 bonded acres of gravel extraction down on Hwy.

8:59
93 S, The request is to expand to the West.

9:06

One of the pieces to the West is already owned by Western Materials and they are looking to purchase additional acreage and expand to the West at a rate of approximately 200 feet per five years.

9:19

With that distance being about 1300 feet, you're looking at expansion over the course of 30 to 35 years, maybe 40.

9:30

That expansion isn't expected to occur for probably 20 years.

9:37

There's some flexibility in there depending on market conditions and conditions in the ground.

9:44

The variance, the property should the variance not be approved zoned for residential 145 and would result in likely development at a density of 1455 acre tracts on that area to the West where the expansion is requested because that's what it's zoned for.

10:09

Can everybody hear me?

10:10

OK?

10:11

Still still a little bit funky.

10:13

It's a little weird to me.

10:14

Different microphone.

10:23

Is that better?

10:25

We'll find out.

10:26

Go ahead.

10:26

That seems much better to me too.

10:30

And so this these two maps show what's likely to occur if the variance is not approved.

10:37

One is during or or at this time it could occur the the planning with the development of five acre tracks to the West and then future plans once reclamation occurs on the existing mine for five acre residential tracks.

10:52

And this has all been presented previously.

10:54

This is just a quick refresher.

10:57

This scenario shows what would happen if the variance is approved and conditions of approval as recommended by staff are opposed.

11:08

Where there would be two 300 foot wide wildlife buffers to the north and the South of the site that's shown in the diagonal hatch.

11:20

And then there are 6 tracks to the north that are left kind of open that they plan to develop now for residential purposes as zoned.

11:31

The mining would occur on 96.3 acres, as I said, over 20 and then an additional 30 some years to the West and then apply reclamation.

11:45

Once material is extracted from that area, the entire site except for the area shown without any hatching would be permanent open space protected area and that open unhatched area is residential and that is approximately 40 acres out of the I believe it's 150 acres total.

12:16

I want to work link to the recommended conditions of approval which have changed and let me just quickly explain the evolution of that change.

12:29

We had a recommended set of recommended conditions for the February 22nd, 1st public hearing.

12:34

On this we did not change her recommended conditions of approval until the third public hearing in May and presented close and then a June hearing the applicant proposed some additional medications which we did not turn in the conditions at that because it was a little too complex.

12:57

But for today, we've taken those proposed mitigations from the applicant and turned them into conditions, created a memo called the August 6th memo.

13:05

It's out on the Zurich County Voice, it's in civic clerk emailed it to folks who asked and I'm going to share it here.

13:15

Just all but simply what you're going to see here is condition 1A all the way to one.

13:33

Can you hear me?

13:34

One North are the same from the original recommendation 1A to 1 N have not changed at all.

13:44

And what we've done is we've added condition #3 which is proposed additional mitigations from the applicant at the June 20th hearing.

13:55

And what that was is it prohibits processing.

14:01

And I'm actually let the applicant speak to these conditions for these proposals a little, a little bit more.

14:06

But it's, it's what was the scale for June 20th where it's limiting how much and where activity can occur.

14:13

And then the extraction area not exceeding a total of 66 acres at any point in time.

14:20

So for every eighth line you have an air care of reformation.

14:27

I've received additional public comment since the June 20th hearing.

14:31

What is in your specific clerk packet?

14:33

We've also done an analysis and in our findings of fact of all public comment and how to address those comments against the criteria, we have received 2 hydro and now we'll see well, one hydro study from the applicant on June 28th.

14:54

And then yesterday afternoon, we received a response to that hydro study from the Throttle Protection Trust.

15:02

Again, I'm going to let the applicant, I think they have more specialists as well as I'm sure CPT the one that addressed those issues.

15:12

The traffic concern was also raised by CPT yesterday in a memo.

15:19

One thing I would note is we, well several things we did contact MDT as part of this agency comment on this and did not receive any comments from them at all.

15:30

Also the proposal has been all along to keep their operation level the same.

15:41

And even though there's expansion, it's not expansion as I understand it of the business.

15:46

It's just going into a different area.

15:49

So we did not see this proposal as increasing traffic in any material way going over the revised conditions of approval and can answer questions about those later.

16:03

And then finally, I will just note that staff is Scott is recommending as we have in the beginning approval of this request and I have a motion for you to reflect that should you decide to approve it for both the Finance Planning Commission and the County commissioners.

16:27

And if you decide to deny it, I can also help you the motion as well.

16:33

And with that all conclude.

16:34

Thanks.

16:35

OK, Thanks.

16:35

Jenny, would the applicant or applicants representative like to make comments?

16:41

And just as a reminder, 10 minutes, Cheryl, could you promote Jamie as a presenter?

16:51

Jamie Herbacher.

16:54

OK, you're on.

16:56

Hey, Hello, Mike.

16:57

Is this Mike working fine?

16:58

It it is.

16:59

You're going to have to get close to them.

17:01

OK.

17:03

My name is John Kappas.

17:04

I'm president of Western Excavating.

17:06

I'm going to address a couple of questions that were proposed or closed to me at the last meeting and then speak to the conditions as Jenny outlined.

17:14

And then I'll turn it over to David Rue of GSI Environmental to present their findings of the water study.

17:21

I was asked if I knew the percentage of gravel the community gets from Lolo as an overall.

17:27

While we do not have information as to the total of all gravel sold in the community, I can give some perspective of the amount of gravel this community does use from Lolo.

17:36

If we take Mullen build as a comparison, the community uses 3 Mullen builds per year out of Lolo.

17:44

If we take Lolo school, the community uses 30 Lolo schools per year out of Lolo.

17:51

So hopefully that gives a bit of picture of the community's reliance on the Lolo aggregates for its construction needs.

17:58

Now I do have to quickly address the letter the county received from CP TS attorney yesterday regarding truck traffic from the pit and what these volume mean for traffic.

18:10

The letter is correct that the NBT has studied the highway from Lolo to Florence and is working on solutions.

18:16

They also correctly identify that heavy truck traffic is a small portion of that traffic.

18:23

The letter does misrepresent that this year our truck traffic has quote significantly increased.

18:30

Well, in fact this year we're slightly less than prior year to move the amount of gravel that I have stated above in comparisons.

18:38

On average, we only have 40% of the daily truck traffic that the letter indicates and our truck traffic is less than 50% of the traffic that would be seen if this land developed residentially as the zoning allows.

18:55

And again, this expansion is to provide more gravel into the future, not to anticipate more annual sales.

19:05

As the letter points out, the MBT is looking to have solutions implemented in the future, so if over time the community does need more gravel out of the pit, solutions would be in place to handle more traffic.

19:17

But expansion of the pit will not 100% make the situation work.

19:21

As the letter states, expansion of the pit actually does not change the current traffic situation pertaining to a prior question of water usage.

19:31

We have three wells on site and we're willing to limit the water usage to the equivalent of 3 exempt wells, which is a total of 105 GPM and 30 acre feet consumed.

19:43

This is half the number of wells that could currently go in on the 620 acre parcels as they sit today and 12 1/2% of the number of wells that can go in under the zoning allowed.

19:56

So now I'll switch to the conditions quickly.

20:01

Oh my.

20:04

So on condition 1J in the memo, we're recommending that that last sentence be removed, that no structures or equipment should be placed within the expansion area.

20:21

And that is because we've added the condition 3 E that is mitigating acre for acre.

20:27

So as I spoke to last time, we do have to move our production equipment into the new area.

20:34

The reason this was here initially is because we didn't have buffer zones.

20:38

The buffer zones then were added, which then allowed us to say, OK, could we mitigate acre for ACRE as we were asked in one of the hearings.

20:45

So we would request that that last sentence be struck from these conditions.

20:51

One other next slide.

21:06

Hang on a second, folks.

21:14

OK, so folks, we're going to take a brief recess and I will stop the clock for you also.

21:21

And we've got some technical difficulties today.

21:25

Folks online cannot hear us apparently.

21:27

So OK, we're going to reboot the system and try again.

21:33

So give us a moment.

21:38

These monitors are this upfront warm up eventually.

21:41

So let's come back into order and Jenny, please give a very brief synopsis of what has transpired.

21:49

Then Mr.

21:50

Capis, come on up.

21:51

No need to repeat everything that you said previously and we'll let you just introduce your next speaker.

21:58

So Jenny, thank you.

22:00

Just for the for those who missed the very beginning, I took several minutes to summarize what has occurred up till now during the five hearings we've had on this project.

22:10

I've gone over the findings of fact, the new information received since the last hearing, which includes 2 hydro analysis and and comment on that analysis and traffic concern.

22:25

Commentary from CPT also discussed revised conditions of approval and presented possible motions for the commissioners, all based on information that is fully in the record out on civic clerk for this meeting as well as Missoula County voice.

22:43

So this all of this information is out there and available.

22:46

I simply summarized.

22:48

Thank you.

22:48

OK, thank you Jenny.

22:49

Mr.

22:50

Capis, you're about four minutes in.

22:52

So I got 6 minutes left for the balance of your time.

22:57

OK, thank you.

22:57

I'll, I'll address the last condition change does need to eat that microphone a little bit.

23:03

You're going to eat the microphone.

23:04

There we go.

23:06

The change would be to 1K to remove the last line because the additional conditions of 3B and 3C better define in detail what we meant with that condition.

23:21

And with that, unless there's questions, I will turn this over to David.

23:27

OK.

23:27

Thank you, David.

23:35

Thanks.

23:35

My name is Dave Room.

23:37

I'm a hydrogeologist with GSI Environmental here in town.

23:41

I present at the last hearing, but I wanted to go over some of the data that we collected since the last hearing, data that was included in the report that was transmitted to everyone here at the end of June.

23:58

A quick summary of what I want to talk about, geologic setting, site specific data collection that was done since the last hearing, analytical results and conclusions.

24:08

So I just have a short slide here on geologic setting because there was a question at the last hearing about water use in the pit and near the pit possibly affecting deeper aquifers.

24:21

This pit is located in the shallow basin fill aquifer in the Bitterroot Valley.

24:27

Groundwater flows from the mountains towards the river.

24:30

Generally speaking, the shallow aquifer is affected by a lot of factors, groundwater recharge pumping, that's domestic and agricultural pumping, as well as sewer systems.

24:43

So I know it's hard to see on this graph or on the figure, but the picture on the bottom right is a geologic cross section produced by Montana Bureau of Mines and Geology for the Bitterroot Valley.

24:55

And you can't even see the thickness of this uppermost shallow aquifer in which the gravel pit is completed in.

25:03

It's very, very thin in relation to the rock units that are below the shallow aquifer.

25:09

So this, any activity in this shallow aquifer is extremely unlikely to affect any of the deeper aquifers that are in tighter rock.

25:19

In addition to that, there are very few wells actually completed in these deeper rock units because they don't produce as much water.

25:29

This is just a quick refresher on the data that we presented last time.

25:34

This is the groundwater contour elevation map that we made using 4 existing wells that are on site.

25:43

If you can see, the arrow on their groundwater flows mostly to the east with a slight S component towards the Bitterroot River.

25:51

After the last hearing, we went into the field and completed some hydraulic aquifer tests at 3 wells on the southern end of the site.

26:02

There's three wells that are very close together a couple 100 feet.

26:05

So that's a pretty good arrangement for testing the aquifer.

26:09

We pumped the well in the middle at a rate of 80 gallons a minute for 8 hours.

26:14

It only reduced the water level on that well by 4 1/2 feet, which is great productivity.

26:22

And one of the wells to the West there nearby well 5A only showed about 2 1/2 feet of drawdown and that well is only located about 65 feet away from rear pumping.

26:35

So any concerns of off site groundwater impacts, groundwater quantity impacts, those are not likely to translate to any neighboring residences because they're more than 1000 feet away.

26:50

I've got a picture on the last slide.

26:53

We analyzed the water level responses of these wells using some specialty hydrogen logic software.

27:01

I don't want to get into the details, but we match the data to a leaky confined aquifer solution, which means that this whole gravel pit and any residences nearby, this isn't just one big clean sandbox.

27:16

There's all kinds of different coarse layers and fine layers in there.

27:20

And the interaction of those different layers is going to limit transmission of can you draw down horizontally because the well might be completed in a little pocket of sandy material.

27:30

That pocket of sandy material doesn't continue on forever.

27:33

It's it's isolated by some final grain units, which is what we saw in the test.

27:38

So we, as I said, we monitor water levels in these three wells.

27:44

The pumping wheel responded, the well to the West responded.

27:48

There was a well to the east.

27:50

It was about 110 feet away that did not respond at all, which invited us.

27:55

More evidence that the current level of activity and water use here at the site is not going to adversely impact anyone located thousands of feet away, especially upgrading, which is an uphill.

28:08

On the bottom right here, I've got 2 graphs.

28:12

It's not important to know exactly what these units are, but we estimated the aquifer transmissivity, which is just a relative measure of how much water it produces for a the whole thickness of the aquifer.

28:26

The units are kind of strange and they're not important, but what is important is that the units, the numbers are different.

28:32

And Dave, you've just got a couple minutes.

28:33

So this second last slide, OK, the numbers came out a lot different for two wells.

28:39

They're located very close together.

28:40

So that again supports these heterogeneous aquifer that has limited capacity to transmit pumping impacts long distances.

28:50

Oops.

28:55

So a few conclusions based on what we've done to date.

29:00

For the purposes of this hearing, we don't believe that any other groundwater investigation is warranted.

29:05

Certainly there will be other groundwater related work that would come later through the DEQ permitting process.

29:13

Limited to no response in water level was noted 65 and 110 feet away.

29:21

You can see here.

29:21

This picture shows the distance between where we pumped those wells and the nearest residences.

29:29

So you can see the closest one is 1000 feet, furthest one is 6600 feet.

29:34

So quite a long distance away compared to the minor drawdown that we observed at you know 100 feet or less.

29:43

The leak you can find aquifer system does limit off site pumping impacts because of the groundwater flow direction to the east.

29:51

We don't anticipate any water quality impacts and again water quantity impacts are limited by the physical characteristics of the aquifer.

30:04

So that is that is it for my presentation and I believe that is it for that.

30:10

Thank you.

30:11

Thank you very much.

30:12

Would the Carlton Protection Trust like to have 11 minutes since we went over a little bit?

30:31

Good afternoon, Graham Coppus, here we are again today.

30:38

Today we hope for and request that the Commission issue a final decision once and for all, denying the expansion of this currently illegal use of property.

30:48

I listen to Jenny's recap.

30:50

There were several things that she missed out or left out that we learned through this process, so I wanted to go through some of those with you.

30:59

First, we learned through the last five hearings that Western misrepresented factual information to this Commission by stating that the gravel mining operation predated the creation of this purely residential zone.

31:11

Even today when I went to the county's website, that factually inaccurate information is still on the front page of the county's proposed project for this.

31:20

I I don't know why, but it still says that the zone is post dating the gravel extraction process.

31:28

So how did we learn that?

31:29

Well, my clients procured historical aerial images which the county is now relying on, which unequivocally proved that that is not true.

31:38

We learned that the very first open cut mining operation to exist on this property was permitted in 1993.

31:44

That makes sense given the historical aerial images we saw that proved that nothing was happening.

31:49

Before that we learned that the original operator procured that permit through a lie that they told Montana DEQ with an attestation affirmatively stating that this was a mine that was not in a residentially zoned neighborhood.

32:07

DEQ accepted this statement at face value, which it does with all statements from the open cut mining industry.

32:13

DEQ testified Underoath in Missoula County in front of Judge Larson that it does not Fact Check any information that these companies give to it in submitting mining applications.

32:24

So it does not regulate protection of water quality.

32:28

It does not regulate air pollution, noise pollution, visual or property impacts associated with these operations.

32:34

That was all testified to in front of Judge Larson here when he issued A preliminary injunction for another illegal gravel mining operation in Clearwater, Montana.

32:45

So it is only through the grace of zoning that we are here asking you to regulate this issue.

32:50

Today we learned that as a part of the internal inquiry that formed Missoula County that the former

Missoula County Attorney recognized that this was a mistake of this government body, that this was issued in the 1st place.

33:05

We learned that County Attorney Sehested recommended in a formal memorandum to the Commission in 2007 that this might be allowed to die.

33:15

He said that it should be swept under the rug and that the problem would eventually go away.

33:20

That would have happened but for the desire of the mining company to take more from the community and to make more money.

33:27

So here we are again.

33:29

Today in the 4th or 5th iteration of this hearing, the company is asking for permission to continue an illegal operation and to continue its negative impacts on this residential community.

33:41

The citizens have made their voices clear and all of the comments to this Commission with a resounding request which is please do not allow this to continue.

33:50

When we brought up the fact that the mining company had provided this body with absolutely no information and related to how the mine could negatively impact water resources of this community, the Commission seemed intrigued.

34:03

As a water resource professional myself, the key take away here is obvious from the reports that there is far too little information for Western to make its bold proclamations that there will be no impacts.

34:16

As you will see in the report that was submitted yesterday from the senior hydrologic team at Hydro Solutions in Helena, none of the conclusions that you just heard were supported by data.

34:27

There is far too little information to make these scientific conclusions.

34:31

That is all laid out in detail by Mike Meredith and Dave Donahue's team.

34:36

And really the take away again is that there's way too little information to make these sorts of assumptions and conclusions from a very small amount of data.

34:46

For one example, you heard that they conducted an 8 hour aquifer test.

34:50

The state of Montana for any new water rights permitting requires a 72 hour aquifer test.

34:55

Why is that?

34:55

Because we need more robust data sets in order to extrapolate out information, essentially to make predictive assumptions about the future.

35:04

So we heard about groundwater flow direction.

35:08

They are telling you that the groundwater is going to flow to the Bitterroot River.

35:11

As you can see in the report from Mike Meredith and Dave Tondahue's team, this pit is opening essentially the groundwater to contamination from the site.

35:22

That's exactly what's happening.

35:23

It's what I told you was happening before, but now you have professional opinions in the record that reiterate that we're exposing super porous materials by mining into the ground, that contaminants then act as a conduit through that mine directly into the groundwater, which they're saying is going to travel to the Bitterroot River.

35:40

So really whether it goes into essentially drinking water wells of the Bitterroot River, there is no evidence in front of you that says that there is not a risk that we're going to contaminate the water resources of Missoula County.

35:53

So really what you have to ask yourself, and what I'm asking you to consider, and what my clients are

asking you to consider is are you willing to risk contamination of water resources to this community, to your community, to the neighborhoods that are surrounding here in order to make more money for a mining company?

36:12

If you vote yes, the record before you readily identifies that that's exactly what you're doing.

36:17

You're just saying, yeah, we're willing to take that risk because there's no evidence one way or the other that that's not going to happen.

36:26

And you know, we did present additional information yesterday that you guys are all really well aware of, which is the ongoing nightmare that is traffic.

36:33

And Hwy.

36:33

93, specifically identified as the worst section is between Lolo and Florence, identified as the deadliest section of highway in Montana.

36:43

As you know, number of notable Montana citizens have been killed in this region, including public safety officers from the county.

36:51

These situations are undeniably made worse by the situation of continuing truck traffic on the road.

36:58

And while we have conditions of approval saying that they're not going to increase truck traffic, we're essentially allowing that to continue.

37:05

And the message that we need to send to this company is that which the former County Attorney asked you to send to them, which is this project is going to die.

37:12

We're going to allow it to come to its lifelong fruition and, and we are not going to continue.

37:18

A mistake that was made here by this Commission in 1993 has been perpetuated ever since.

37:25

And the right and obvious choice here is just to let this sail off into the sunset.

37:31

And that's what we're asking you to do.

37:34

During that time.

37:35

Montana dot can work on its solutions.

37:37

They can come up with what our controlled intersections or whatever they choose to do roundabouts.

37:43

But those solutions are gonna take time.

37:46

And hopefully by the time those solutions come about, this project has ended.

37:52

And, and really that is the obvious choice for you guys.

37:56

The very thing that this Commission is asked with doing is protecting citizens who have taken the time, the energy and the resources to go through the zoning process to say to this government that this is the neighborhood of residential uses only.

38:13

That proclamation was made in the 1970s that should be upheld today.

38:18

There's no reason that this intervening illegal activity should be given the weight that a neighborhood that went through a formal process and made its decision loud and clear to the government should be swept under the rug so that this company can come along 20 years later and undermine it.

38:39

I think another thing that we heard that was a serious consideration for you guys is there's a lot of assumptions that are being made about what the land use is going to be here.

38:49

If it's not this.

38:51

Miss Dixon talked about it, the company at Western talked about it, which is that if this is not a line, it's going to be some giant neighborhood.

39:00

I think we saw a map that showed all of the lots, but that's not an assumption on which you can base your decision because there's no information in the record before you that indicates that that's going to happen.

39:11

There is no essentially subdivision plat that's competing this for you guys to consider.

39:17

There is no other project that is competing with this one.

39:21

So instead, the status quo is that this land is going to remain as an agricultural use.

39:28

That is the facts.

39:30

And in fact, what we know is that there is interest in the community in making that happen, that if this doesn't happen that there are agricultural buyers that are interested in this property.

39:40

So it's not a foregone conclusion that we're gonna put a major subdivision on this location.

39:47

And I just think that you guys have to keep that in mind as you're as you're making this decision that relates to Western statement that there's going to be 12 times as much water use if this is going to turn into a major residential subdivision.

40:01

The problem with that is even if it was going to be a major residential subdivision, Montana DNRC is required by law to make sure that there is only one well for that entire subdivision.

40:12

And that came down out of a recent Broadwater County case that I litigated this spring in which the court said absolutely not.

40:19

One exempt well per neighborhood, that's it.

40:22

So you're talking about 1/3 of the amount of water that they're proposing today.

40:27

And in fact, the amount of water that we just heard them talk about was the first time that we had ever seen that information.

40:33

As Mr.

40:33

Meredith brought up in his report, there have been no water rates submitted to this body.

40:38

There's been no information about water use and volume flow rates submitted to this body.

40:43

So again, we're talking out of out of purely hypothetical on a major portions of what this land use is going to look like should you do the right thing and deny this mining proposal.

40:57

Similarly, they didn't provide you any information about a public benefit again, and just about a minute left.

41:05

This is the fifth time that this governing body has asked them to explain how they're benefiting this community, how much gravel goes to this county from this site.

41:15

And we saw them say again that they do not have that information available to you.

41:20

There is no information that the exact amount of gravel that is being currently used from this site cannot be procured from one of the fifty additional licensed facilities in Missoula County that exist today.

41:32

So with that, one of the things that you have to consider is what is the public interest here?

41:37

What is the public benefit?

41:39

And I submit to you that there is absolutely no public benefit from this project.

41:42

It's only a private benefit that benefits a private company.

41:46

And that is not the question before you all today.

41:48

So thank you.

41:50

Thank you.

41:51

We will now open it up to public comment.

41:54

Let's begin with folks here in the courthouse in the Sophie Moies Room.

42:00

If anyone wants to comment, come.

42:03

Just no need to raise your hand.

42:04

Just come on up to the microphone or queue up if you'd like and state your name for the record.

42:10

And please keep your comments to 3 minutes or less.

42:12

Thank you.

42:13

My name is Scott Leibenguth.

42:16

I currently own the area that they're proposing.

42:24

The council over on this side here said that there's no plans on subdividing the property if the pit is not approved.

42:34

That is false.

42:35

If the pit is not approved, we definitely are going to subdivide it one house or five acres and put that together.

42:44

When I first moved into that property, actually my first house was adjacent to the South side of the pit and at that time there was 3 pits in the area.

42:59

The one that Western has, the one that is now called Cunningham Court.

43:04

And then there was another pit that was between the two highways.

43:09

As you see, Cunningham Court is now reclaimed and houses on it.

43:16

As you see the between the two highways is all reclaimed and I don't see where there's going to be an issue.

43:25

But as per if the if this is not approved, definitely will be subdivided into one house per five acres.

43:35

Thank you.

43:37

Thank you, Sir.

43:38

And please, no applause or other verbal indications one way or the the other.

43:46

I was going to be respectful of one another here today.

43:49

So additional public comment, come on up and please state your name for the record and keep your comments 3 minutes or less.

44:07

Hello, my name is Bill Zader and I've lived in Montana almost most of my life, 77 years.

44:15

Just recently gave up my pilot's license after 51 years of flying in this great country.

44:21

I live here and braced a family here because we love the beauty of the area, the wildness and the nature and the wildlife.

44:30

And I guess I'd like to say that if you go against what has been recommended by past county attorneys to allow this project to die, you're setting a terrible precedent for all of us in Montana.

44:47

This won't be, you'll be faced with several situations that are going to look at this your actions if you approve it, and it'll be detrimental to our beautiful state.

44:58

And to think that the traffic is not going to increase if they put an asphalt plant and cement plant in there.

45:05

They're going to recover their money invested in there.

45:08

The massive amount of traffic increase.

45:10

There's just, that's just to be counterintuitive to think that wouldn't happen and to think that if we, you know, our alternative is the one house for five acres that's wonderful that would fit into the community.

45:24

So I'm urging you to think about this and bitter rivers important to all of us.

45:31

And if you if you're spewing massive amounts of asphalt and cement and fluid in the air, it's going to the river, they'll go through the air to the river or it's going to go underground through the river.

45:43

And the report that you heard earlier doesn't address that water flow to the river.

45:48

And it's part of the Columbia River basin.

45:51

The Bitter River is so.

45:53

So I guess, like I say, I hope that you take the residents that we live in the area and those that you would live in a residential area, imagine a plant like this going in next door to you.

46:08

Thank you.

46:09

Thank you.

46:09

Mr.

46:10

Zader.

46:11

Additional public comment Come on up.

46:24

My name is Jay Mittman and I live at 6500 Sun Valley Rd.

46:29

in Florence in the area that we're talking about today.

46:33

We have lived there since January of 1987.

46:38

And certainly when we moved there, there was no visible noticeable evidence of any mining going on.

46:45

And I think it's appropriate to mention that in 1993, our youngest daughter was born and since that time there has been substantial expansion of that mine and substantial increase in traffic.

47:06

And that I would like you to please consider the residents in this area and uphold the rule of law and not permit them to continue what has been taking place illegally for so many years.

47:24

Thank you.

47:26

Thank you, Sir.

47:27

Additional public comment.

47:29

Come on up.

47:44

Hi, I'm Jim Herstein, and I actually live in the lot next to the lot that Mister Lyman Goose talked about when he used to live.

47:53

And I agree with the previous commander that we have seen this, this mine expand far beyond what it should.

48:07

We were told by the Western representatives at one of these meetings that there was enough gravel in the current, in the current footprint to last for 25 years.

48:23

I don't think I'll be here 25 years from now at my age.

48:27

But if you are and if you approve this, I hope you will go out there and see how big this is, this gravel that should not be as big as it is, let alone twice as big in a residential area that has zoning to protect the area.

48:50

So I would appreciate it if you would deny the request.

48:56

Thank you.

48:57

Thank you, Sir.

48:59

Additional public comment come on up.

49:11

Hi, my name is Louis Archez and I live in the area.

49:17

Couple of comments first on the the truck traffic and I can't stay one way or the other, whether there's more trucks or less trucks going by.

49:25

But I can tell you this, the trucks that are on the road now are huge.

49:30

Used to be little dump trucks.

49:32

Now they're large trucks pulling pump trailers.

49:35

I mean, you can say there's fewer vehicles, but there's more gravel coming out.

49:40

So that's something to think about.

49:43

And the traffic on that road, it's, you know, it's bad and we all know that.

49:48

And it, you know, it kind of makes me sad because all spring I've been watching a nice fox raising her two young pups in a in a den about about 250 yards from my house.

50:01

I haven't seen them in the last two weeks.

50:05

Actually, I think I have seen them in the last two weeks.

50:07

2 weeks ago as I was driving down the highway, I saw two dead young foxes on the side of the road.

50:14

It's just, you know, it's a shame nobody's speaking up for the wildlife here either.

50:19

They study the water and everything.

50:21

But what about the wildlife that have been used in this area?

50:23

There's a reason.

50:25

There's a reason why that's that area is considered a grizzly bear recovery corridor.

50:31

There's a reason that the elk hang out there.

50:34

There's a reason for all that wildlife there.

50:37

Now I can explain to you what that reason is, but I only have 3 minutes so I'm not going to go into that right now.

50:43

But there is a reason.

50:44

If you talk to a wildlife biologist, you'll find out.

50:47

And, and I keep hanging my hat on one thing that you guys said in the very first meeting we had here when you told those people that zoning is your answer.

50:59

Well, we've had zoning since 1976.

51:04

The PIT didn't go until 93 illegally.

51:07

Zoning was supposed to be our answer then, but we never got an opportunity.

51:13

Now's our opportunity to say we've got zoning, Zoning with this zoning and aggregate to plan.

51:20

I've been planning for the last 17 years there.

51:22

I, I lived in the rattlesnake my soul because I wanted to live somewhere where I could raise a garden, plant an orchard and live the dream after I retire of possibly selling my goods at a farmers market, Missoula farmers market.

51:39

OK, all the stuff is now up in the air.

51:42

And Mr.

51:42

Slotnick, I believe you know something about organic farming.

51:46

So, you know, we've been in that neighborhood.

51:50

Many of us have plans for many years.

51:54

They're just looking to make some extra money.

51:57

I don't blame them for that.

51:59

And lastly, I would welcome 14 new neighbors in our neighborhood.

52:03

I think it fits the zoning and it fits a neighborhood.

52:07

Thank you.

52:09

Thank you, Sir.

52:10

Additional public comment.

52:18

My name is Stefan Ford.

52:19

Is there any chance I could put up some slides on the screen?

52:24

Actually, if you could just provide us verbally your comments, that would be ideal.

52:29

I'll try to shorten it.

52:30

I had, I had some points I wanted to hit, but Graham did a good job already summarizing them.

52:38

My main point here was related to the fact that all the legality issues that we've noticed about this existing and potential future operation had all been already raised and noted by the planning office and in the in the future.

52:55

And one document I wanted to show, which I was given through a public records request, was a February 2023 memo of ADRT meeting where the planning office identified already most of the issues related to the legality of this operation and its potential expansion.

53:16

One of the comments that were written in this memo, which which resonates a lot to this neighborhood, is that you would have to demonstrate hardship in accordance with ZD 40.

53:26

Not seeing at least initially how not being able to extract gravel as a hardship.

53:30

You have other land use options on this, on these properties.

53:34

So along with my neighbors, I would totally welcome 4014 more neighbors.

53:38

Neighborhood is great.

53:40

There's plenty of room.

53:41

The keyword here in the comment though is in accordance.

53:45

Plenty of times we've heard Western explain how good the gravel and how rich the soil is.

53:51

Well, it seems that the hardship has really to be seen in the light of the zoning statutes and not what could be done outside of these limitations.

53:59

So really, financial gain or or the incapacity of doing obtaining financial gain through the purchase of this land should not be taken into consideration.

54:08

This is not a valid argument as far as hardship goes.

54:14

Another point out of this memo is pretty telling to perhaps the toughest issue, and I'm quoting here perhaps the toughest issue, the ZD 40 non conforming use provisions.

54:24

The spirit of the zoning is to allow existing uses but not expansion of non conformities.

54:30

I mean it is clear as day.

54:32

The way to read this is basically use variances allow for for non conforming uses to be implemented within strict parameters.

54:39

The expansion of non conforming uses is prohibited.

54:42

Allowing this expansion would destroy the spirit of the zoning and set a dangerous precedent for the entire state of Montana.

54:48

These are all elements that were that the planning office was fully aware and when the staff report came out, I mean this came as a shocker that none of these elements were brought to light.

55:00

Another element I would write I would like to bring up is regarding the 2008 memo that was written by the County Attorney seized it and you're and you're just about out of time, Sir, out of time.

55:11

You can wrap it up if you like.

55:13

OK, so I would like to draw your attention to a note regarding the 2020 dates, which has been discussed before And and Mr.

55:22

Slotnick asked John Hart about this 2020 date.

55:25

Should something have happened in 2020 that didn't happen?

55:28

Well, my opinion is that yes, 2020 was the the reclamation date that should have been applied to this operation.

55:37

And as it might have come as something or or new information to most of us.

55:42

I'm going to draw your attention to a sticky note in the PDF file that was sent with the application to the planning office that was written by Jamie Arbacher on December 3rd, 2, 2019.

55:54

This sticky note reads.

55:56

I think this limited period of time may be key.

55:58

I think the planning office may argue that they gave Stan an opportunity to operate under a permit issued in in 2009.

56:05

I believe that time period expires in December of 2020 based on the reclamation plan and the 2009 DQ application.

56:13

This clearly shows that all the parties involved in this application fully knew that this operation was supposed to shut down in 2020.

56:22

And I think today my opinion is that this Commission has all the information it needs to deny this application.

56:31

It's been going on long enough.

56:33

I think we all know that there's some serious issues that should not be rewarded with an approval of this variance.

56:39

Thank you, Sir.

56:40

Thank you.

56:47

Elizabeth Haney, I'm in Florence and I just wanted to mention, on a previous hearing, Tyler had called Missus Torrey Fort up to the podium and directed the question to her, saying that it appeared you were one of the last residents to purchase a home in the neighborhood.

57:05

What did you do for your due diligence?

57:07

In my opinion, I think that was not appropriate, but in my opinion, I think it would be equitable and Claire to ask the same question to the applicant as well because in my opinion, if they had done some more due diligence, we wouldn't be in this current situation here.

57:27

So thank you very much.

57:30

Thank you.

57:30

Miss Amy, additional public comment.

57:36

Anyone else in the room want to provide comment?

57:41

OK.

57:42

Oh, come on up, Sir.

57:44

Folks, don't be shy.

57:48

My name is Alan Foss.

57:52

We're back to the water.

57:54

I have a question for our enemies here.

57:59

I would like to know why, if there's plenty of water, why are they preparing to put in a huge citron on the east West part of their pit?

58:15

I'm not allowed to go on there, but we have some Longview pictures that are piped 60 feet long, approximately 7 feet in diameter, and there's four huge manholes that are going to control apparently water that they're going to pump.

58:34

If there's so much water, why do you need a huge Citroen complex?

58:40

That's my question.

58:41

Thank you, Mr.

58:41

Foss.

58:42

We'll explore that a little bit later.

58:44

You showed a little public comment in the room.

58:52

OK, let's go online.

58:54

Is there anyone online or on the phone who would like to comment today?

59:01

Anyone online or on the phone?

59:09

OK, last chance for any public comment for folks in the room who have not previously spoken.

59:19

OK, I will close the public hearing and open it up for questions among the Planning and Zoning Commission members.

59:28

And just as a reminder, the Planning and Zoning Commission comprises the three county commissioners.

59:35

Also, we have with us our Chief Public Works Officer, Shane Stack and Tyler Gernand are treasurer and clerk and recorder for Missoula County.

59:46

So questions from anyone, Tyler.

59:56

Thank you.

59:56

Commissioner Sturmeyer.

59:57

Mr.

59:58

Labengoth, I have a question for you that I'm hoping you can address because it's come up a bunch.

1:00:04

Can you can you tell us why a gravel pit instead of Holmes?

1:00:10

So you just talked about if the gravel pit doesn't happen that you would subdivide into homes.

1:00:15

Can you from your point of view, since you own the property currently, express why you would prefer a gravel pit to homes?

1:00:26

Thank you.

1:00:29

We bought the property with speculation of what's going to happen in the future.

1:00:37

What is going?

1:00:39

How are things going to go in the future?

1:00:42

I seen that gravel pit when I lived on the South side.

1:00:45

I seen it expand.

1:00:46

I thought this is a perfect opportunity to buy the property which I own.

1:00:51

The house on the back 10 acres and the western has been the best neighbor I've ever seen ever.

1:01:00

There is no dust issues, there's no noise issues and I have been living there since the 70s.

1:01:09

I believe that the the most economical profit that I can make would be the gravel pit.

1:01:19

But if not, we'll move forward with the housing project.

1:01:24

But that also leaves whatever, 20 houses tapping into the aquifer, 20 houses with sewer systems, much more traffic with that.

1:01:36

I just believe it's a very good thing for the community.

1:01:39

The community needs gravel.

1:01:40

The very first thing that you do in a community is build a road and a foundation.

1:01:46

And gravel is the very first thing you will need.

1:01:49

Thank you.

1:01:51

Thank you.

1:01:52

Anything else?

1:01:54

I do have a second question, but this is more for Jenny.

1:01:59

In the last hearing, I had asked the question about if this variance is approved, but it sounds like this could potentially go to litigation.

1:02:09

So if this variance was approved and the permit, the existing permit were found to have not been correctly issued, could we have a condition that would essentially say the variance is conditioned on the validity of the existing permit?

1:02:24

Do you believe the conditions or can you explain how these conditions would address that scenario?

1:02:30

You bet, without taking the time to pull it up to show you, although I will pull up the motion at another time at a later time here today.

1:02:41

The motion re is written in such a way that it acknowledges the legal nonconformity of the existing pit and that's because you can't expand it if it's not legal.

1:02:56

And all of the documentation that I have seen presented over the the years lead me to a conclusion that it's a legal non conforming use.

1:03:08

And so your motion will reflect that it is if you make that motion, you're saying this is a legal non conforming use and we and we are allowing expansion of it.

1:03:19

So, so that's not that it couldn't be challenged, but that's the direction.

1:03:25

Jenny, just to be clear and I had the same question that I posed to John Hart.

1:03:30

So if a court was to determine that it was not a legal non conforming use, that would basically nullify our action here today if we took the action to grant the variance?

1:03:45

Yes, I believe so.

1:03:48

And in conversation with John Hart from our county Attorney's office, he feels that is this the case as well, that if if you determine that the existing PIT is legal not or is not legal, that it was expanded illegally, then you can't grant a variance to an expansion of an illegal PIT.

1:04:12

OK, thank you.

1:04:17

Let's see other additional questions from the Planning and Zoning Commission.

1:04:22

Jenny, can you are we planning and zoning Commission?

1:04:27

Yes, they're still the planning and zoning Commission.

1:04:29

Can you just go through explain the difference between Part 1 and Part 2 again, the values of each of them.

1:04:38

The the primary differences are one is an older, older what people thought of a citizen initiated the governing body received proposals from people with at least 40 acres to zone and that's throughout the county.

1:04:55

There are little pockets of 40 plus acres that have these Part 1 zones on them.

1:05:00

Often times they were in response to a use that either they didn't want in the area or they did want.

1:05:09

They are different sections of law and have different provisions.

1:05:14

Both Part 1 and Part 2 allows the variances as we have here today.

1:05:18

That's the criteria are similar.

1:05:21

But Part 2 zoning which applies in Missoula Valley that you adopted just two years ago for the central portion of Missoula County, that's Part 2.

1:05:32

And we specifically included a provision in there to not allow for use variances, whereas Part 1 zones do not have that provision.

1:05:42

They allow use variances.

1:05:45

And so when the applicant sought out of how to pursue this request that it was one way on that they could pursue and that's what they chose to do.

1:05:56

But just to be clear, Jimmy, it, it does not mandate that we grant use variances.

1:06:01

It gives us the discretion to do you have absolute discretion.

1:06:05

Thanks Josh.

1:06:07

Fine.

1:06:07

Can I ask you a question please?

1:06:13

Sure if I can.

1:06:14

Thank you Sir.

1:06:15

So if I understand it right, our granting the approval of this variance is passively saying we recognize the legality of the original hit.

1:06:26

That is correct.

1:06:27

As Miss Dixon pointed out, you would be affirming that is a legal non conforming use.

1:06:32

If we were to deny the variance, are we saying it's not illegal non conforming use?

1:06:41

I would anticipate the motion would go that far.

1:06:43

You would just be denying the variance.

1:06:46

So denying the variance doesn't have an an effect on the continuation, continued existence and use of the original pit, the current pit, is that correct?

1:06:59

I believe that's correct.

1:07:00

Thanks.

1:07:03

I do have a question for the applicant or applicants representative.

1:07:08

There was a question that came up in the public comment regarding a so-called cistern or other water conveyance piping and such that might be on site.

1:07:21

Can can you speak to any of that or what might be observed out there right now?

1:07:28

Yeah, John Kappas, I guess I'd have to see the pictures.

1:07:32

We do have a diesel tank that is a, it's not full of diesel.

1:07:38

It's there so we can put it in.

1:07:41

It's a, it has double containment.

1:07:44

We have not started using it.

1:07:46

So if that's the tank that's seen sitting there, that would be for diesel fuel.

1:07:52

We do.

1:07:52

I, I spoke in the past where our volume pumped to wash the gravel has to be higher GPM than what the volumes I was talking about.

1:08:03

So we do pump into ponds, settling ponds where we then wash the aggregates and then we can reuse that water.

1:08:10

So we're not you, we're not having to use brand new water and we can continue to use that water until it's either evaporates away or we have to add new water.

1:08:22

So those would be the two things that I'm assuming were looked at.

1:08:26

One is the diesel tank and two is that there is piping into the settling ponds.

1:08:32

OK, so the settling ponds.

1:08:34

We also received a comment from someone that indicated they did a aerial, did a flight over the site and noticed some water pooling of some sort.

1:08:46

That would be the settling pond.

1:08:47

Yeah.

1:08:48

So they're, they're two ponds.

1:08:50

So we pump into the the new water goes into the first pond.

1:08:54

It then washes the gravel and from the gravel comes the fines of the gravel.

1:09:00

We're trying to clean up the fines.

1:09:02

It goes into the settling pond, it settles out into another pond to clean out, and then we can reuse that water.

1:09:07

OK.

1:09:08

So just to be clear, that's not groundwater that's percolating up, correct.

1:09:13

OK.

1:09:14

Thank you very much.

1:09:16

Additional comments from anyone?

1:09:21

Yeah, go ahead.

1:09:21

A question, John, before you before you sit down.

1:09:24

John, come back please.

1:09:26

Should have tried to keep you up there.

1:09:27

But you'd mentioned the with the traffic.

1:09:30

You were saying that if, if you don't expand and, and it's this area is developed with, with housing, I'm assume like I've heard 20 and I've heard 14, but you know, whatever whatever that number is, you'd mentioned that your truck traffic, your trip generation is about 50% of what would be generated.

1:09:48

I'm curious like what is your, your daily trip generation at your site today And what are you basing that on as far as the comparison with the potential development?

1:10:01

So the potential development, and I've probably have WGM speak to it, but I can give you what the number is this 20?

1:10:08

Let's see there would be there's 620 acre lots at 4-5 acre lots.

1:10:13

So that'd be 24.

1:10:14

And my memory is there's about 9 point something trips per day that the county assumes on residential.

1:10:23

So that's that's the number there for and and that again that would be 12 months of the year, seven days a week when we're doing our trip numbers for the pit, we don't there's about two months that we don't have any kind of traffic at the pit because of weather conditions.

1:10:42

So we're running off an 10 month time frame and we're five days a week.

1:10:48

So we don't have traffic at the pit on Saturday, Sunday.

1:10:52

We run roughly on average when we look at our transfers to Missoula and then our sales from the pit to other to customers, we run on average about 40 trucks out of there between our trucks and sales to customers a day.

1:11:11

Yeah, OK.

1:11:17

Thank you, John.

1:11:17

OK, additional.

1:11:20

Yeah.

1:11:21

Questions or comments?

1:11:22

Yeah.

1:11:23

Tyler, Mr.

1:11:31

Rue, I hope I didn't miss this.

1:11:32

As invigorating and stirring as hydrogeological reports can be, I mostly focused on your report seems to say that the water flowed from to in a southeasterly direction toward the river.

1:11:46

Did you, did you consider or did you guys discuss in your report about the any contamination going into the river?

1:11:52

That was one of the comments.

1:11:53

And I'm just curious if that was considered.

1:11:55

It wasn't considered.

1:11:56

And should there be an asphalt plant ever put in here, MDQ would require monitoring wells to be installed.

1:12:04

So no, we didn't hypothesize about what would happen, but should a gravel pit or excuse me, an asphalt plant ever going there would be monitoring wells installed, both upgrading and down grading of the pit.

1:12:17

And quite frankly, with, you know, regards to spills and shallow groundwater contamination that can happen anywhere.

1:12:25

And honestly, a gravel pit is a one of the safer places because they do have best management practices in place.

1:12:32

They have spill kits, they maintain a buffer above the groundwater.

1:12:37

If there's a vehicle crash on Hwy.

1:12:40

93, nobody's expecting it, and it's always an emergency response, a spill cleanup.

1:12:48

But mine operators are required to have that equipment on hand should something happen.

1:12:53

And obviously, they've got the equipment to dig up impacted soil.

1:12:59

If there ever was a spill or an overfill, they've got equipment to do that right away before it gets anywhere.

1:13:06

Thank you.

1:13:07

Thank you.

1:13:09

Did you have.

1:13:10

Yeah.

1:13:10

Josh, Jenny, I just wanted to revisit the conditions of approval.

1:13:15

Do you want me to bring them up?

1:13:19

Yeah.

1:13:19

If you could.

1:13:20

I, I, I'm nervous that I've remembered things incorrectly, but I thought that there wasn't going to be asphalt or concrete at this site.

1:13:31

As far as whether there's asphalt or concrete, I'm going to defer that question to the applicant because I have been a little confused by that myself.

1:13:41

And honestly the zoning is not the controlling factor other than potentially conditions of approval and our conditions do not prohibit those.

1:13:49

So if you have questions about, I thought those were in the conditions, would the applicant like to come up and clear up any confusion?

1:13:57

Thanks.

1:14:03

So I think the confusion, the expansion, we are not asking for an additional concrete plant or additional asphalt plant, but the current pit, we are allowed to have one asphalt plant and one concrete plant.

1:14:13

We currently have a concrete plant there and it's stationary.

1:14:18

The asphalt plant is portable.

1:14:20

So they move in and out.

1:14:22

Currently there is not an asphalt plant there, but the permit allows for an asphalt plant.

1:14:29

Well, then following that, I think what Josh was saying.

1:14:32

So in 20 years, if if the expansion is approved, you'll move incrementally to the West and bring that equipment with you to the West and then reclaim simultaneously the the land that you're leaving to the east.

1:14:51

That's a very good question.

1:14:53

So when we're talking about the different equipment, we've got the processing equipment that crushes the gravel that will move into the new area, but our asphalt plant and our concrete plant are going to stay within the existing area.

1:15:08

So the way we can position, we can keep 66 acres open at a time, we'll keep roughly 20 acres available where the current asphalt plant and concrete plant are we that'll stay as we move into the new area.

1:15:27

So only processing equipment will move into the new area.

1:15:32

The concrete plant and asphalt plant won't have to as we adjust the 66 acres we left room to keep in the current footprint enough so we could keep the concrete plant and asphalt plant sighted.

1:15:44

Thank you.

1:15:45

Yeah, go ahead Josh.

1:15:47

And if you're going to reclaim an acre as you dig a new acre, excuse me Gerald, can you mute your microphone please?

1:15:56

Do you want me to re say that?

1:16:00

No, essentially that's what's going to happen.

1:16:03

But it's not because the process, we're going to have to go through the process as I talked about one of the conditions are before we go in to the new area, we are reclaiming the 20 acres to the north.

1:16:17

So we'll reclaim 20 acres and ask for new 20 acres.

1:16:20

So it won't be one acre from just to be clear, you know, but it will be in concept that what we currently have is 66 acres to extract from.

1:16:30

We are agreeing not to have more than 66 acres in the future to extract from.

1:16:36

So it's the same size gravel pit.

1:16:39

It's just slowly shifting over the next 20 years.

1:16:44

That's correct.

1:16:44

It's shifting to the West and reclaiming from the north.

1:16:48

And, and so that reclamation will come to the north.

1:16:50

That's how we can keep some of the land we're going to have to reclaim.

1:16:54

We'll get to the point in order to keep the footprint for the concrete plant and asphalt plant.

1:16:59

We'll be reclaiming some of the expanded area in the future as we mined into it.

1:17:07

And and if I understand it right, you have 20 years left if you continue to mine gravel at the pace that you're mining today, Is that correct?

1:17:16

That is correct.

1:17:17

But that that was when we initially applied for this because we are going to reclaim the 20 acres to the north.

1:17:25

It does get us into the expanded area sooner than our original application because we gave up 20 acres to the north.

1:17:34

But if if, if we were to deny this variance and you just stayed put, you have 20 acres worth of gravel.

1:17:42

If you continue to mine at the pace you're currently mining at 20 years.

1:17:46

That's correct.

1:17:47

And if roughly if you slow down because the market for gravel slows down, it that 20 years could be longer is that?

1:17:56

Yeah, it could be.

1:17:58

All right.

1:17:58

Thank you.

1:17:59

And it could be shorter because as I said, to the to the north, we start kind of a different deposit.

1:18:07

And so depending on where we have to stop mining in that deposit, it could be shorter.

1:18:12

That's why when we looked at expanding to the West, we know the material to the West is better material than to the north.

1:18:19

And that's why when we looked at it and we were looking at the reclamation on how we were going to keep the pit roughly the same size.

1:18:29

That's why we were able to give up the material to the north and say, well, if we go to the West, we can balance it out because of the material to the West is better.

1:18:39

Do you have a sense of how much shorter than 20 years are we saying?

1:18:43

So 15 to 30 or what?

1:18:45

What?

1:18:45

I don't want to put words in your mouth there.

1:18:47

What what are you thinking in time frame between 10 to 20 years?

1:18:52

20 would be on the mean, 10 would be on the shore, 20 is going to be what we currently have and that's all at the current.

1:19:00

OK, that's correct.

1:19:01

OK, thanks.

1:19:04

I'm getting confused with some timeline.

1:19:06

So if this is approved, the reclamation would begin for the northern section and expansion would begin on the West?

1:19:17

That is correct.

1:19:18

We would start moving to the West.

1:19:19

We will reclaim what we currently have to the north.

1:19:23

It sits up higher if you've visited out there.

1:19:26

And so we've had some piles higher because of the way we mine that.

1:19:30

So we're just going to reclaim that and then go to the West.

1:19:33

And and then we do have additional floor on our current pit that we would take down as well.

1:19:42

So that's why we wouldn't necessarily have to really go into the West absolute.

1:19:48

We do have some gravel left in the footprint even when we reclaim to the north.

1:19:54

OK.

1:19:54

And then estimating the the next expansion wouldn't begin for 20 years.

1:20:09

Yeah.

1:20:09

So if we expanded to the West for 20 acres, that's it?

1:20:13

Yeah, there's the 20 acres to the West.

1:20:16

If approved, the reclamation to the north and you know you bump out how far to the West is 20 acres.

1:20:25

See we're, we're going into its 60 acres, so that roughly half with with the different corridors maybe a little less than half.

1:20:36

So we would move into the 20 if we're.

1:20:42

Yeah, we want to see an expansion beyond that first 20, when we give up the 20 to the north to do 20 to the South, that's going to be then about 20 years before we do another one before we bond for the next and reclaim because then we're going to have to reclaim another 20.

1:20:59

So the next 20 we would reclaim or *****.

1:21:07

So 20 years, you do another one and reclaim.

1:21:11

Yeah.

1:21:13

So we.

1:21:15

John, do you want to use this?

1:21:16

Yeah.

1:21:16

Let's use that microphone here, please.

1:21:21

You prefer me to.

1:21:22

Doesn't matter.

1:21:23

You can sit here, and if you want, you can use my computer.

1:21:27

Yeah.

1:21:28

Why don't you come over and use the computer so people online can see the cursor.

1:21:39

And if you can try to show what the progression of expansion would look like, that would be great.

1:21:45

Yeah.

1:21:46

So this is the 20 that we're talking about reclaiming to the north here.

1:21:53

And so that means we would come out here whatever to the West, whatever 20 acres are, let's say roughly here.

1:22:03

And once that is extracted, before we could go another 20 acres, we're going to reclaim this 20 right here.

1:22:13

That allows us to get into another 20 that allows us to leave this or the current operations and then to do the final whatever's left, it wouldn't be another 20 because we're we're losing that buffer is taken out roughly 10 acres.

1:22:37

So that would leave a 10 acres left at the final move.

1:22:41

And so we would reclaim 10 acres right here.

1:22:45

So that's how that footprint's gonna move over time.

1:22:50

Thank you so much for that.

1:22:53

Thank you.

1:22:55

I have a question for Mr.

1:22:58

Compass.

1:23:04

So could you do us a favor and just recap what Hydro Solutions conclusions were for those who have not seen that document?

1:23:14

Sure.

1:23:15

Yeah, absolutely.

1:23:18

First and foremost, that there's no data to support the conclusions.

1:23:21

So the conclusion that there will be no impact to water quantity and water quality, those conclusions are not supported by data.

1:23:28

That's conclusion #1 reached by Mike Meredith and Dave Donahue and their team.

1:23:32

So we can read that if you want to go through the specifics, but they talk about that the report lacks information that's necessary to make these decisions, that the wells monitored by GSI were not appropriately located.

1:23:51

The approach used by GSI for assessing groundwater flow and direction is suboptimal for multiple reasons.

1:23:59

The GSI report indicates that four wells in the monitoring network are used as water supply wells.

1:24:08

The data collected from these wells are particularly erroneously suggests that groundwater is deeper than it actually is.

1:24:15

Such an error adversely affects the accuracy of GSI's interpretation of groundwater flow and gradient.

1:24:21

Secondly, spatial configuration of the wells to where they're actually located is not is not optimal for assessing groundwater flow and direction.

1:24:29

Ingredient is poor and likely limits the accuracy and relevance of these determinations.

1:24:36

At the scale of the site, the arrangement of the monitoring wells is much closer to a line and a triangle, which is necessary to make that determination.

1:24:47

They recommend that the condition be imposed that they monitor groundwater for at least a year prior to a decision being made on this, basically saying you need a year worth of data collected to be able to make conclusions that they're making.

1:24:59

So again, overarching theme, not nearly enough information here to jump to the conclusions that they did.

1:25:06

I think if you remember, I told you that that's what was gonna happen a month or two months ago.

1:25:12

I said they're going to come up with a report that says that there's going to be absolutely no impact.

1:25:17

And, and how do I know that?

1:25:18

Because I do this for a living.

1:25:19

I litigate against companies like this for a living.

1:25:21

And every single time they have a report that says the same thing.

1:25:25

So that's, that's what happened.

1:25:29

So they also suggest most notably that it's super likely that the shallow groundwater is going to be impacted by the mine.

1:25:42

Let's see what they say.

1:25:43

This is page 2.

1:25:45

Based on the materials I reviewed, appears likely to be a potential for shallow groundwater to be encountered during mining on the proposed expansion area.

1:25:52

Evidence that shallow unconfined groundwater is present in the area includes that the water level reported from well 5 and GSS report is only 9 feet below ground surface.

1:26:03

The well has a total depth of 40 feet below ground surface and it's well log shows it does not penetrate any confining layers, indicating saying that groundwater at this location is shallow and unconfined as opposed to arising under pressure from like an artesian well.

1:26:19

GSI reaches a similar conclusion about well five while avoiding, but does not explain how the proposed mine expansion will avoid intercepting this shallow unconfined groundwater.

1:26:32

They go on to state the information extent, depth and quantity of shallow groundwater beneath the proposed expansion is uncertain.

1:26:42

However, the items I've cited above like suggest the possibility that mining in excess of nine feet in the proposed expansion area will intercept groundwater.

1:26:51

So applicants should provide information on current and proposed water use, which they never did.

1:26:57

And qualitatively speaking, any removal of odor burden and gravel above the aquifer at the proposed mine expansion area will increase the risk of surface contamination impacting groundwater over that of a known mining application.

1:27:15

Specifically, removing overburden and exposing the aquifer as occurs during open cut mining, eliminates material that otherwise traps or ***** the movement of contaminants spilled at the surface.

1:27:27

This establishes a direct pathway between the surface and groundwater, which dramatically increases the aquifer susceptibility to contamination from surface spills and releases.

1:27:38

So that's exactly what you guys were concerned about in the 1st place.

1:27:44

And when you came up here and asked them if they did any research about that, the answer was no.

1:27:49

And they said, Oh well, the mining company will have a spill prevention plan.

1:27:52

Except for what the actual science shows is that's not sufficient to address the direct conductivity between the shallow groundwater and the site, especially if they intercept it during the mining process, which is also indicated likely to happen.

1:28:07

Thank you, Mr.

1:28:08

Thomas, Josh, Jenny, can we again revisit those conditions of approval?

1:28:16

I feel more clear on the asphalt or concrete, but on the other conditions, you bet.

1:28:21

Just a second here.

1:28:27

So if we go back to the beginning of the list of conditions, the IT starts with a requirement that Western Materials would file a development agreement binding upon them and successors that would apply once they expand beyond their bond existing bonded area.

1:28:48

And we list out the legal descriptions for those properties.

1:28:51

And those provisions that we put in as conditions in this development agreement cannot be modified unless you give the approval at a later date.

1:28:59

So these are these are binding on western and future purchasers.

1:29:04

Make sure I understood finding only on the new land, not on the old land.

1:29:15

No, it's it applies to the entire area.

1:29:19

Great.

1:29:19

Thank you.

1:29:20

Yeah.

1:29:22

And so the first set of conditions have to do with burning the entire site.

1:29:27

The second set of conditions have to do, oh and also sorry, but the berms making making sure there's adequate site visibility at intersections and also keeping piles lower than a lower elevation than the berms that surround to north-south and West.

1:29:50

So that's what the berms do.

1:29:52

Then there's dust mitigation and then there is traffic mitigation And essentially because there were no identified impacts by any of our agencies commenting, but we did hear from testimony.

1:30:06

We took testimony and public comment and created a condition that stop signs be installed at the pit as I the concern was trucks were just whipping out onto the highway, oh highway.

1:30:21

And then as condition having to do with the noise mitigation and the white noise backup beepers, which I think has been implemented already hours of operation with limited hours.

1:30:35

So mostly keeping that to Monday to Friday with some limited night time, I think hours of operation don't see any there's time on there.

1:30:48

If they give two weeks notice to do a short period of night time operations for emergency type jobs and how are land owners that are 300 feet from their property, how are they notified?

1:31:02

It says post notice at the location.

1:31:06

Let's say you provides.

1:31:09

I would expect that they would be notified if there's a sort of some sort of listserv or a group or by e-mail or by mail or by posting notice at locations visible.

1:31:23

But but since it doesn't say that it simply says post notice at location visible from Hwy.

1:31:29

93, there's no I think it would be likely posting notice.

1:31:36

So it's physical posting right at the visible from Hwy.

1:31:43

93 S adjacent to the pit and along McLean Creek Rd.

1:31:47

So did you say for emergency work at night or they can do anything at night?

1:31:52

They just have to provide notice?

1:31:58

Limited night hours are are permissible.

1:32:01

If the pit operator notifies us, she'll include a copy of the contracted work indicating the night time operations approved by the health department and the dates and times of the hours of those.

1:32:16

So the health department would have to approve a permit.

1:32:20

Yeah.

1:32:23

So it it as I as it was explained to me that the and again, they may be able to provide better answer and we can also beef up conditions.

1:32:34

But as it was explained to me, those nighttime operations are generally pretty rare and for our for unique situations.

1:32:43

So I guess I would defer that question.

1:32:44

Hold, hold that thought.

1:32:45

Sir, do you have something germane to the note posting?

1:32:50

Sure, please.

1:32:50

Hey, come on up to the microphone, please.

1:32:53

Stefan Fort, just a quick question.

1:32:55

All these mitigation look like they're all well intended.

1:32:58

I would just like to know how are they supposed to be enforced and who's gonna keep Western in check?

1:33:04

Thank you.

1:33:05

Thank you, Sir.

1:33:07

OK.

1:33:07

And so one option is to just remove remove the nighttime operation option or to be more clear about under what circumstances those could occur.

1:33:21

How many nighttime operations do you do, Mr.

1:33:24

Campus?

1:33:25

Come on up.

1:33:29

Make the case to us that nighttime operations are necessary.

1:33:33

So we have not done night time operations there since I've been there.

1:33:38

But why it's necessary As we see right now with that project from Missoula to Lolo, they're doing night time work.

1:33:45

So it would be that that was a requirement of the property owner of the state, not a requirement of us.

1:33:52

So it would be for those kind of projects that we would request that there's the opportunity to do night time.

1:34:03

So it is relatively rare, very rare, but it it does occur and it occurs because of traffic and and other considerations beyond what the contractors considering Josh Jenny to Mr.

1:34:19

Ford's question, how does enforcement work?

1:34:23

Enforcement works on primarily complaint basis and with conditions of approval.

1:34:30

We have a staff in our office that responds to complaints and works and coordinates with the county attorney's office on how to pursue those.

1:34:42

Yeah, let me just interject.

1:34:44

And this is nothing different than anything else related to enforcement.

1:34:49

We don't have build inspectors over law enforcement roaming around looking for folks who are violating these sorts of conditions of approval for, for land use matters that we're reliant upon folks in the community to raise the concern to us.

1:35:09

Josh, thank you.

1:35:10

So hypothetically there's a, a violation of the condition of approval neighbor calls our planning office, then what happens?

1:35:18

We would likely reach out to Western or the OR the pit operator, whoever it is at that time and let him know there's a complaint.

1:35:28

If there, if there's, if there's some like non responsiveness in that contact, we would then do a notice of inquiry, which is a written form of, of investigation where we say we've been informed about this situation.

1:35:43

Can you please clarify what's happening and what is there in fact a violation?

1:35:50

If we don't get response, then we elevate it to note notice of violation and sometimes coordinated compliance with other agencies and pursue it then if necessary with the assistance of the county attorney's office.

1:36:04

OK, thanks.

1:36:05

So can we go back to the conditions?

1:36:07

Yeah, absolutely.

1:36:10

I'll keep them more continue on.

1:36:11

You bet.

1:36:14

So go ahead skipping or finishing up with hours of operation.

1:36:18

We get to the conditions regarding processing and equipment and you heard the applicant request that those 22 conditions under processing and equipment have the the highlighted yellow deleted from those conditions because they are either dealt with in a different way or are redundant with the added condition at the end.

1:36:42

And staff supports that the the removal of these two yellow highlighted sentences.

1:36:49

And then then there.

1:36:52

So essentially the first one says that structures associated with extraction and production must be set back 100 feet from old Highway 93 S and can and also cannot move any further South than their current locations.

1:37:06

But what John talked about here today is that with this new mitigation of this one for one reclamation that they may need to move some processing equipment into that expansion area and that the second sentence contradicts that.

1:37:22

And so we would support deleting that second sentence.

1:37:26

The second condition under processing and equipment says once extraction has been completed, the site must be reclaimed and the pit cannot be used for processing materials from other site.

1:37:37

Other sites material from other pits may not may not be brought to the site for processing once 85 acres of the permitted 96.3 has been disturbed and that is no longer the situation because they're only limiting it to 66 acres.

1:37:54

So that that second sentence there is contradictory.

1:37:57

So we support the applicants request to delete those two sentences.

1:38:02

It's still maintains setbacks of equipment and that you cannot bring in any kind of reclaimed materials for processing at a later time.

1:38:13

OK.

1:38:14

Then there's the 300 foot wildlife corridor on both the north and the South sides of the property shown in the crosshatch on the North and South sides.

1:38:23

Also future development scenario is as I showed in the slideshow that the area and any kind of cross hatching is permanent open space and the 40 acres here would be allowed to have residential development at a density per the zoning.

1:38:42

So that's something that could happen in what 40-50 years from now.

1:38:45

And then how is how does that ensure that that is what happens the filing of the development agreement as well as the filing of this of variance approval which will come up in a title search on the property?

1:38:58

Thank you.

1:39:01

And then finally a requirement that only wildlife friendly fencing be installed in those wildlife buffers because that's their whole point is to allow wildlife movement.

1:39:12

Actually not the other whole point.

1:39:13

It's part of the point is wildlife movement, but also the 300 foot distance separation from the residence to the South and the north.

1:39:23

And then you see condition 2 is crossed out but it's because I moved it down into condition 3.

1:39:32

So condition 3 and and skipping the new condition 2 basically says get all other required permits.

1:39:39

So skipping to condition 3.

1:39:41

The DEQ permit has must be revised prior to issuance of a zoning compliance permit for any for further expansion on the property of mining operations and cannot be revised or deleted without your approval.

1:39:56

1 is that mining must occur no closer than within 10 feet of groundwater.

1:40:03

The second one is that pit run from other gravel pits may not be processed at this pit.

1:40:07

This has to do with that bringing in of other material.

1:40:12

Any material needed for mixed designs from other gravel pits must be processed elsewhere and hauled in.

1:40:19

So if they need something to add additive.

1:40:22

To create their product, it has to be processed elsewhere.

1:40:26

Processing process materials held from other pits shall be limited to 20% of their annual production of the plants to ensure that when this pit is out of its gravel resource, it will no longer produce concrete or asphalt.

1:40:41

And that is not something the Planning Office is going to monitor.

1:40:45

It will be part of the DEQ review and approval and consult between pit operator and DEQ as far as annual productions.

1:40:59

Then there are two groundwater monitoring wells that need to be put in place before there's an expansion or placement of an asphalt plant on site.

1:41:08

And then lastly though that what we call what we're calling that one for one reclamation of up to 66 acres.

1:41:16

Thanks.

1:41:16

Yeah, Go ahead, gentlemen from Sorry, gentleman from Western.

1:41:23

Thanks.

1:41:23

Thank you.

1:41:25

Is this the right gentleman?

1:41:26

Yes, Sir.

1:41:27

OK, I'm mixing up my capuses and capuses, so I'm just sticking with that.

1:41:33

So the so Graham said that the groundwater was 9 feet.

1:41:39

And here this is saying you got to stay 10 feet above groundwater.

1:41:43

So, OK, if I, if I, if I I totally could have screwed that up.

1:41:47

I thought.

1:41:48

I thought that's what I heard.

1:41:49

So that sounds to me like you can't dig in the ground.

1:41:52

So if you wanna defer to get addressed.

1:41:54

Yes, I thank.

1:41:54

Thank you.

1:41:55

OK, thanks.

1:41:58

Got off easy there, Mr.

1:41:59

Campus.

1:42:00

There is a well on site where the depth of groundwater is 9 feet, but it is at the absolute lowest southwest corner of the site that is not mined.

1:42:10

And the statement that was read earlier that mining deeper than 9 feet on the western side of the site might hit groundwater, that is completely false.

1:42:21

That western part of the site that is currently, yeah, that is undeveloped is I don't have the topographic data in front of me, but 10s if not more than 100 feet higher than where that well is with the depth of groundwater of nine feet.

1:42:38

Thank you.

1:42:40

Come on up.

1:42:41

Come on up.

1:42:43

The wrong person.

1:42:44

If you could take a seat, Mr.

1:42:46

Kapas.

1:42:46

Oh, he just pointed at me.

1:42:47

I had the lecture.

1:42:50

No apologies.

1:42:53

Yes, Mr.

1:42:54

Kapas.

1:42:55

I was just going to add to that the the concrete plant.

1:42:58

Oh, I should sits at 10 feet above groundwater.

1:43:02

It's about a foot, foot and a half higher than the well and we are not going to go lower than that anywhere on that site.

1:43:10

So as we move that site, that would be the lowest elevation we would be at.

1:43:15

And you can see the groundwater from the wetlands to the West.

1:43:19

And that's where the bonded area, even though we own that property, that is not part of the bonded area.

1:43:26

And so that gives you an idea of where where that water level is.

1:43:31

Yeah, go ahead.

1:43:31

And you're going upslope quite a bit as you move to the West.

1:43:35

As we go to the West, it will upslope and never get lower than where that concrete plant is.

1:43:41

And that's why we know that the concrete plant is 10 feet above groundwater.

1:43:46

And so it will slightly slope up.

1:43:48

Further up we go.

1:43:50

Thanks.

1:43:50

Thank you.

1:43:52

Other questions or comments from the Planning and Zoning Commission or I would entertain a motion.

1:44:03

Well, I have a question for Shane Stack.

1:44:07

Yeah, Shane can.

1:44:10

Can you talk about the needs or the sort of material, the, the uniqueness or not of, of, of the product that's produced here?

1:44:22

Sure.

1:44:22

I and, and I can't speak to the, to the uniqueness of the, the product.

1:44:26

But what I can say is that, you know, we bid out probably 400 to \$500,000 worth of, of asphalt every year.

1:44:38

And Western is, is one of those companies that will generally bid.

1:44:42

And so for us, I can tell you the competition is good.

1:44:47

If if you know, we start losing gravel pits in the area and we don't have the material in the area and we start to have to rely on sources further and further away.

1:44:57

The cost for us is going to continue to go up.

1:45:00

And to put this into perspective, five years ago, I think our cost for asphalt was \$45.00 a ton and we're, we're at \$71 a ton right now.

1:45:08

So it's not getting any cheaper.

1:45:10

And and that means we, we are, are able to take care of less and less of our infrastructure with the money that we receive.

1:45:20

And so these sources are important to us.

1:45:24

Thank you.

1:45:27

I've got, I've got a question, Jenny, a couple questions for you.

1:45:30

First we heard the comment that presumably the comment was related to some prohibition, statutorily regulatory or otherwise, regarding expansion of non conforming uses.

1:45:50

What What's your what's your take on that?

1:45:52

The the word legal was missing from the comment.

1:45:56

Is there a differentiation between being precluded in this type of zoning district to expand a non conforming use?

1:46:06

But if it's legal non conforming, is that a distinction to be made or not?

1:46:11

I think the distinction is in the question of can you expand a use that isn't allowed in the zone?

1:46:17

And under Part 2 zoning you actually can and you have to go through a special review process.

1:46:24

But there's some acknowledgement that someone who has, let's say, put something on the property and then it was zoned.

1:46:34

We we didn't wouldn't want to take that away from them outright necessarily.

1:46:39

I mean, some zoning regulations just say you're non conforming.

1:46:43

We've zoned you, you're done.

1:46:44

And once you're, you know, once you make any change.

1:46:47

But Missoula County Part 2 zoning has said no, We recognize the investment and the livelihood of that person who's done that and they can expand those non conforming uses up to 50%.

1:47:02

What I think Part 1 zoning is saying here is that no, we're not allowing that.

1:47:08

We're not allowing someone to use a process in a part in this Part 1 zone to expand it.

1:47:15

But that doesn't preclude the option of of requesting A variance.

1:47:19

All right.

1:47:20

And because you can ask for use variances, one of the the kind of steps of logic that I used in thinking about this is that if Western Materials was not asking to expand their legal as we're asserting legal non conforming use to the West, somebody completely different could come in and ask for a use variance to do this there.

1:47:48

It would not be an expansion of a legal non conforming use.

1:47:52

It would be a new use which is allowed to be requested as a use variance in the Part 1 zoning district.

1:48:00

OK, thank you.

1:48:01

One additional question which escapes me.

1:48:07

So Josh, those conditions of approval, if we subtract the ones that would only apply to the new land, are these conditions in in action in a sense in effect on the existing property or would there be a change in behavior on the part of Western on their current property and their current way of mining gravel?

1:48:32

I think that and I can't speak to what's happened prior to a year ago because I was not familiar with the site at all.

1:48:43

So I have heard there that they have made some changes in the last year to reflect what some of those conditions say, such as the white noise, backup beepers, the stop signs, the perhaps how they're dealing with the berms.

1:48:58

I haven't been out for a while to see if they've vegetated the berms.

1:49:02

So some of the behavior may have from what I understand being reported have changed even prior to the this action by the Commission and with if with approval there would be some further changes that would be observable.

1:49:20

But we looked at treating the whole site with conditions, not not necessarily isolating it to just the expansion area.

1:49:27

Thanks.

1:49:30

OK, it's come back to me.

1:49:31

So Jenny, refresh my memory.

1:49:34

As far as based on your research, is there any evidence that that ZE40 was adopted to preclude or to limit the existence of gravel mining operations?

1:49:52

None that I have found.

1:49:53

OK, thank you.

1:49:55

Additional questions or comments from the Planning and Zoning Commission or are we ready, is someone ready to break the ice with a motion?

1:50:07

And Jenny, if you could bring up staff's suggested motion, we can see what the Commission wants to do with it.

1:50:17

It's a little long at the at the recommendation of our attorney's office.

1:50:22

So covering bases Tyler.

1:50:32

So I guess my I have a quick question on the motion, which is do we need to make any amendment based, I'm not reading the whole thing right now, but do we need to make any amendments to remove those conditions that you had highlighted?

1:50:46

I think that's acceptable to the Commission.

1:50:51

Make note of that.

1:50:52

And as you can see at the very end in the parentheses, I anticipated the potential that you would go along with those two deletions that should be on the record as we discussed.

1:51:02

So you can reference as the August 6th memo and as amended with the deletion from condition J and KJ and K.

1:51:13

Yeah, write that down before I forget it.

1:51:15

But so I I'm gonna make a brief comment before I make the motion, which is I guess from my take on all of the commentary that we've heard.

1:51:29

It does seem to me that this is in the public interest in that gravel is a necessary resource for a community to grow, for infrastructure and for homes.

1:51:39

There are special conditions, conditions unique to the property and both the quality of the gravel at this site, but also its uniqueness located next to an existing gravel pit that is already permitted.

1:51:52

And I it also seems that literal enforcement of those regulations would make it difficult to extract that gravel as there would be buildings built on top of it.

1:52:04

And that it would require essentially the additional gravel pits be built outside of this zoning district, which would require again, additional infrastructure and building and potentially more disruption of the environment to access gravel that is necessary for our community.

1:52:21

And so with all of those things in mind, I would move to recommend approval of the request for a use variance in zoning district #40 to allow the existing legal non conforming gravel operation to expand onto parcels legally described as Cos #5565, Parcels B and CCOS #3935.

1:52:44

The South half of the northwest quarter of the South half, the north half of the southwest quarter of the southwest quarter and the South half of the southwest quarter of the southwest quarter.

1:52:56

Section 23, Township 11 N Range 20 W Based on the application, the findings of facts and conclusions of law found in the Staff Report and public comment and other information submitted for consideration prior to and at public meetings, subject to the conditions of approval as shown in the August 6th memo as amended for Sections 1J and 1K.

1:53:24

Motion is in order.

1:53:25

Is there a second?

1:53:26

How is Shane?

1:53:34

I'll second.

1:53:35

OK.

1:53:36

It's been moved in 2nd and further discussion on the motion.

1:53:41

Josh, I'd say I was very moved by what I heard from neighbors in our multiple times to chat on this.

1:53:52

And if I'm in reading in a bit to what I hear from neighbors, it sounds like their desire would be for this gravel pit to end now.

1:54:05

Life would be much improved if the gravel pit would end now.

1:54:11

That is not the question before us.

1:54:14

If we were to say no to this variance, the gravel pit will continue for possibly 30 years and it will not continue with these conditions of approval, which sound to me like an enforcement mechanism of kind of best behavior for gravel pits, an attempt to deal with noise, traffic, the water, etcetera.

1:54:37

Not nearly as good as making the gravel pit go away.

1:54:41

But if you're going to have a gravel pit there for the next potentially 30 years, I personally would rather see this gravel pit behave much better than it possibly is right now, or at least it was a year ago.

1:54:55

I know that is cold comfort and will inspire anger, but I do want to describe my rationale for landing where I am.

1:55:05

It's strange to say yes to expansion is actually the way to get at better behavior now for the next 30 years.

1:55:14

That's where I'm coming from.

1:55:15

It's a bit, it's counterintuitive, but that's my understanding.

1:55:23

Additional comment by the Commission, additional discussion.

1:55:33

OK, see none.

1:55:36

Let us go ahead and vote.

1:55:38

And again, this is a recommendation to the Board of County Commissioners, the three of us, and we will reconvene and take up this matter after we adjourn as the Planning and Zoning Commission.

1:55:53

Any additional discussion?

1:55:56

OK, seeing none, all those in favor, please signify by saying aye, aye, aye.

1:56:02

Any opposed?

1:56:05

OK, that's a unanimous recommendation to the Board of County Commissioners to approve The Planning and Zoning Commission will adjourn and let's take a 5 minute recess and come back and I do mean 5 minutes.

1:56:21

We're going to get going promptly and reconvene as the Board of County Commissioners and take it from here.

1:56:37

OK.

1:56:37

Thanks everyone.

1:56:38

We will reconvene as the Missoula Board of County Commissioners to take up this item where we left off with a recommendation coming to us from the Planning and Zoning Commission to approve the variance request.

1:56:59

So to begin with, we're going to open up the public hearing and would gladly take any additional public comment from folks in the room or online on this item.

1:57:12

Please limit your comments to 3 minutes or minutes or less.

1:57:16

No need to repeat anything that you said previously.

1:57:20

So it looks like we have someone at the podium already.

1:57:23

So if folks could again, please say your name for the record and share with us your comments.

1:57:30

Thank you.

1:57:31

Yes, Good afternoon.

1:57:32

Liz Haney, Florence, Mt In 1993, Missoula County records reflect that property owner Paisley, located in the same ZD 40 residentially zoned area, was denied subdivision when the County Attorney stated the hardship cannot be of the applicants making.

1:57:55

So some of the hardships that we've heard are of the applicants making, in my opinion.

1:58:02

Also currently there are piles of asphalt that have already been brought into the site and they're clearly visible from the road because they do exceed the berm.

1:58:14

Thank you.

1:58:17

Thank you, Miss Haney.

1:58:18

Additional public comment, Dave Birch, resident of the area.

1:58:29

So we heard the owner talk about the gravel pit was his first choice as far as what he'd like to see the property do.

1:58:43

And you know, that's probably well and fine, but that's only one income stream for him.

1:58:50

So he's going to mine us out, he's going to reclaim it, and then he's going to subdivide it.

1:58:56

So he's actually got 2 income streams, which kind of double dips.

1:59:04

What what he's doing and I'm I'm really disappointed in the planning board to go through all the steps that you've done on a piece of legislation that came through that's illegal even according to your own attorney trying to put a stop to it.

1:59:34

The noise level.

1:59:36

So I live West of that and I can hear any time they turn on the rock crusher, the trucks are coming or whatever.

1:59:45

So that is erroneous.

1:59:53

The noise is there.

1:59:56

I had in my notes the incoming asphalt, which was a in condition of one through 3.

2:00:04

It wasn't supposed to happen.

2:00:06

That's already happening.

2:00:10

And I know the wildlife buffer.

2:00:12

You know, there's 150 elk that reside out my back door that I watch.

2:00:18

I know they go to the river and even the highway department puts up signs.

2:00:24

You know, those elk are going to move.

2:00:28

I don't know if that those help know where that buffer zone is.

2:00:38

Talking about the trucks a little bit, when Stan had it, he had a 8 yard dump truck, OK.

2:00:46

And the truck and trailers they're bringing through typically those 40 foot trucks or 27 yards, the pup behind, it's another 12 or so close to 40 yards of gravel going out.

2:01:02

Every truck and 40 trucks coming in a day, that's 160 some yards going out.

2:01:11

And having working in Missoula, watching the gravel pit, with the amount of trucks that come in and go out, that thing is sunk.

2:01:25

That gravel pit, very big.

2:01:28

Mr.

2:01:28

Birch, you're about out of time and if you could wrap up, please.

2:01:34

So in my feelings, I'm I'm really disappointed in the whole situation.

2:01:44

Why we're even worried about trying to give a variance to something that's illegal to start with.

2:01:52

Thank you.

2:01:53

Thank you, Mr.

2:01:54

Birch.

2:01:55

Additional public comment.

2:01:59

Come on up.

2:02:03

It was Arches again.

2:02:05

And I'd like to say, Mr.

2:02:07

Slotnick, I think you're, I think you're extremely wrong in that, that we'd be better off with a gravel pit with conditions on it.

2:02:17

I mean, evidently there were conditions on it before wasn't supposed to go beyond 15 acres.

2:02:23

That didn't stop it from now being 66 acres.

2:02:26

So I really don't think that the conditions are going to do a damn thing to help us.

2:02:30

OK, that's First off.

2:02:32

Second of all, the the the the thing that you read to approve it that the board recommended mentioned legal conforming use that hasn't been ascertained yet whether that pit is legal or illegal.

2:02:46

I would submit to you that why doesn't Western get that issue off the board first?

2:02:53

Why don't we see whether that pit is legal or illegal before we allow it to expand?

2:02:59

If the courts come back and say, you know what, yeah, we're going to grant, they will will grandfather men for some reason and then they want to go to apply for the variance.

2:03:09

We can do this all over again.

2:03:11

But until it's known to be legal, it's ridiculous to allow them to expand.

2:03:17

That's just, it's outrageous.

2:03:20

And I think you'll get a lot of pushback.

2:03:23

I'm certain of it.

2:03:24

Thank you.

2:03:26

Let's go online.

2:03:27

Gerald Reynolds, I see you have your hand up.

2:03:30

Would you like to comment?

2:03:35

And you're going to have to unmute yourself, Sir.

2:03:45

You're still muted.

2:03:46

Mr.

2:03:47

Reynolds, Can you, can you hear me now?

2:03:50

Yes, we can hear you now.

2:03:52

OK, this fellow that just talked is summing up my feelings.

2:03:59

The issue is not about groundwater.

2:04:03

The issue is not about expansion.

2:04:06

The issue is about legality and honoring zoning.

2:04:11

And the lady who talks about zoning Part 2 and zoning Part 1 should remember that zoning Part 1 is what this area has been zoned to.

2:04:25

Also, this area did not include an asphalt plant in the original 1992, OK?

2:04:39

And it probably did not include a concrete plant.

2:04:43

The issue for you people, you three members of the Commission, should be to determine whether we're talking about a legal assessment, a legal area or not.

2:04:56

And if the courts have to decide that, let me assure you, should you OK, this variance courts will decide whether that pit continues.

2:05:12

Thank you for listening.

2:05:15

Thank you, Mr.

2:05:15

Reynolds.

2:05:18

Let's go back to the room here.

2:05:19

Anyone else in the room like to offer public comment?

2:05:34

Yes.

2:05:35

My name is Bill Zader.

2:05:36

And I, I think what you're you're considering here is you're thinking about, Gee, we need this gravel, We need an asphalt plant that's going to spew all kinds of stuff.

2:05:48

No matter what they say, they're going to recover their investment as quick as they can.

2:05:53

I know how being in business myself, you recover your investments, quality of life for the citizens in this area and essentially future residents here in the area.

2:06:07

It's it's more important than financial for the county.

2:06:11

You know, the county has other sources of the the products.

2:06:15

I mean, there's 20 some other gravel pits that should not be in your thinking.

2:06:20

Quality of our life should be.

2:06:23

And the final thing is the county has no enforcement mechanisms.

2:06:27

You can ask these people to do all kinds of things, agreed to things, agreed to not to do things.

2:06:33

But there you have no enforcement.

2:06:36

You don't have anybody to look at it.

2:06:37

And you all drove past when you looked at the mine.

2:06:40

You go past the junkyard, that's clearly illegal, right, furthest to the north.

2:06:46

And did anybody, did any of the commissioners say, Gee, we got to look into that?

2:06:51

No, just drove right past it.

2:06:53

But that's an eyesore.

2:06:54

And you look at the county legalities, they shouldn't be able to do that while it's fencing it in.

2:07:00

So you have you're putting all of us homeowners at risk and our families and future families don't, don't approve this.

2:07:09

Thank you, Thank you.

2:07:10

Mr.

2:07:10

Zader.

2:07:12

Additional public comment from folks in the room here in the courthouse.

2:07:20

Mr.

2:07:21

Compass.

2:07:26

Now I'm tasked with asking you to not follow your own recommendations to yourself, which is a a tough thing to do.

2:07:35

But I'm going to change my message, which is now the Commission is opening up self up to to liability.

2:07:43

Essentially, if you follow the Planning Commission down its invitation, invitation to approve this, you are exposing the Commission to legal liability on a grand scale.

2:07:55

So we're talking about expenses of further taxpayer funds to support something which does not need to be supported here.

2:08:04

We have claims of public nuisance that can be brought against the county Commission for failing to uphold its duties to enforce zoning.

2:08:13

There are declaratory judgment actions.

2:08:16

There are a number of claims in which will involve this Commission itself.

2:08:22

I'm asking you to think about that liability as you make this decision.

2:08:26

As you've heard, there is substantial resolve to move this matter into court.

2:08:34

That involves your resources, your time, because you will be named plaintiffs or or named defendants in that action.

2:08:42

And what the courts are gonna look at, as we've discussed before, is not just the public interest component of this, but also whether the zoning district itself can be upheld in its import, what it means.

2:08:59

And so you have to ask yourself, can essentially I'm trying to find the exact language here, but can the zoning district remain a residential use only neighborhood after you do this, which is essentially what what you're being asked to consider and it's actually from the Carlson case, which is the spirit of the ordinance must be observed.

2:09:24

So after you do this, can the spirit of the zoning ordinance be observed?

2:09:30

What is the spirit of this ordinance?

2:09:31

It's a residential use only neighborhood.

2:09:33

So how can that be observed after you do this?

2:09:37

And that is not considering the fact that there's been an illegal mine in this neighborhood since then.

2:09:42

That's not going to be considered by Judge Larson or Judge Halligan or whoever we get as a judge in this case.

2:09:49

They're gonna ask three questions.

2:09:51

The variance, is it in the public interest?

2:09:53

2, is it a literal enforcement of the ordinance going to result in an unnecessary hardship?

2:09:59

And three, the spirit of the ordinance must be observed to ask you to think about how that's possible.

2:10:06

After you do this, I ask you to think about the taxpayer resources that are going to be expended fighting this battle in court over the next several years.

2:10:14

I ask you to think about it.

2:10:16

Thank you.

2:10:18

Thank you, Mr.

2:10:18

Compass, additional public comment folks in the room.

2:10:23

Come on up, Stefan for it.

2:10:28

I would second, Graham, in the sense that I would recommend denial of this use variance simply because we all know that Western is going to fight for it.

2:10:38

Well, let's bring it to a judge.

2:10:39

Let's let a judge look into it.

2:10:41

Let's let it go to an appeal and Western make the case that their operation is perfectly legal and should be allowed to expand, which we think is not.

2:10:50

I would also second Lewis here.

2:10:54

As far as the enforcement goes of all the mitigations, I mean the list is long.

2:10:59

I don't know how this how this is even viable in the in the future.

2:11:04

This operation is planned to expand over 30 or 40 years.

2:11:07

How are neighbors supposed to keep a check on this?

2:11:11

This means that basically on a daily basis, we're going to have to make sure that Western is still doing what they promised they would do.

2:11:17

Of course, they're going to do it for the first year or so.

2:11:18

And then as time goes, whatever happens, happens.

2:11:22

And I'm not just this, just saying that because I don't trust necessarily Western, I have a problem more with the county as far as upholding these mitigations and the past.

2:11:32

The history of this but proves exactly this fact.

2:11:37

Countless infringement on the DEQ permit were found through research from the previous owner.

2:11:43

Nothing was done.

2:11:45

The the county itself came with recommendations to shut this operation down as far as making amends basically to the situation that was never enforced.

2:11:59

This is an unbearable situation for the neighborhood, just unbearable.

2:12:03

So yes, closing or or or or closing the operation right now is not on the table, but at least preventing it from growing any further.

2:12:13

And this letting this aberration keep growing is, is the only solution we have at hand right now.

2:12:19

So I would strongly recommend again denying this use variance.

2:12:23

Thank you.

2:12:24

Thank you, Mr.

2:12:25

Fort, additional public comment from folks in the room before we go online.

2:12:29

Yes, Sir.

2:12:32

Alan Fosse, you may bend me, but you won't break me.

2:12:39

I'll be back.

2:12:41

OK.

2:12:42

Thank you.

2:12:42

Mr.

2:12:43

Foss, additional public comment from folks in the room.

2:12:45

Come on up.

2:12:52

Yes, Jan Harris and I would like to know on this zoning we had over 60% of the people in the zone, yet the people on the east side of the highway were excluded.

2:13:10

You Jeannie said that in one of the the sessions that the east side and a friend of mine also got a letter that she was not a part of it even though she runs a barn over there.

2:13:25

Those the people that drive that highway are as affected as we are living there.

2:13:33

In the windstorm on the 24th, you could not see anything over there because there was so much gravel flying.

2:13:45

God, when I dust my house, I'm surprised Western hasn't come over and and charged me for the the dirt and gravel I get out of my furniture.

2:13:55

This is ridiculous.

2:13:57

We have come together as a community and said no, we don't want the variance yet.

2:14:04

You're putting it in our laps that we're supposed to be policing them right now.

2:14:10

They've got a berm that's been there since last fall that's never been seated.

2:14:15

There's stacks of material standing 200 feet above the berm because it's up towards the house.

2:14:24

How are we going to fight this?

2:14:27

Are you going to give us our phone number that we can just put on speed dial so that we can call you every day?

2:14:34

This is this is ridiculous.

2:14:36

We have a nice community and you have are just letting them walk over us and destroy it.

2:14:45

Our houses, we can't even aren't going to be able to sell them because we've got this monstrous pit coming in and it's coming in farther.

2:14:56

There's four houses.

2:14:57

One's been taken off of the market because they can't sell them because of what's going on.

2:15:05

I don't know.

2:15:07

There's nothing that we can do because there is nobody standing for us.

2:15:12

It's costing us money to defend ourselves against something that shouldn't even be there.

2:15:19

So do we just throw the zoning out and everybody can start an auto Body Shop and put up apartments and we can just have a free for all in that neighborhood?

2:15:33

I would please consider this is not a good thing.

2:15:38

Thank you.

2:15:40

Thank you.

2:15:43

Anyone else in the room like to comment?

2:15:48

OK, let's go online.

2:15:49

I saw Sarah Johnson's hand up earlier.

2:15:52

Sarah, did you want to comment?

2:15:56

Sure.

2:15:56

Hello.

2:15:58

Hello, you know it has occurred to me throughout this whole entire thing that we as citizens have been coming together on our own time with our own funding.

2:16:10

I finished work officially 3 minutes ago.

2:16:13

So I feel like I can actually speak now.

2:16:17

Our own time on our own budget to come together to say that we do not want this.

2:16:21

Whereas Western, it's their business, their have funding to support this.

2:16:24

They have people there.

2:16:26

And I will just point out that the only person that I have heard speak up in opposition to this is the person who's going to benefit the citizen, the neighbor that's going to benefit financially from this transaction.

2:16:38

Whereas the rest of us have nothing but negative benefits to us.

2:16:42

There's no positive benefit directly for us with this motion to approve this variance request.

2:16:52

And if it continues, whether or not it gets expanded or not, no matter what, the citizens will continue to carry the burden of financing any sort of opposition to the detriments to our community health wise, water wise, any impacts to our animals, etcetera.

2:17:12

And it just it, it feels very unfair, especially when in this democracy that we have the loudest voice is the voice of opposition.

2:17:20

We do not want this variance passed.

2:17:22

Thank you for letting me speak.

2:17:25

Thank you.

2:17:25

Miss Johnson, Anyone else online like to speak to this?

2:17:33

Anyone else in the room?

2:17:37

OK.

2:17:38

I will close the public hearing and open it up for questions or comments from the Commission.

2:17:46

Question for Brian, so thank you.

2:17:53

So many of the neighbors have brought up the question of the legality of the existing pit.

2:17:59

Is that a, is that a question at issue and if so, how is that determined?

2:18:06

The first answer is that is not a question at issue before you today.

2:18:09

The sole issue that you have to consider is the recommendation of the Planning Zoning Committee and whether or not to grant the variance termination of the staff injunction.

2:18:17

Brian, I'm not sure.

2:18:18

Can people hear you?

2:18:19

Maybe can you start over again and eat the microphone?

2:18:21

Is that clearly?

2:18:22

Can everybody hear me now that that that's better?

2:18:24

OK.

2:18:26

To your first question, Commissioner Slotnick, the question is not whether it is legal or illegal.

2:18:30

It's simply whether or not to grant the variance today based on the recommendation of the Planning and Zoning Committee, the staff report and the advice of their counsel in reviewing this matter has determined that it is a legal non conforming use.

2:18:43

I understand that members in this room and online disagree with that finding, but that is not the question that you're being asked to decide today.

2:18:54

Other questions, that was my question or comments.

2:19:02

Jenny, feel free to get.

2:19:04

Go ahead.

2:19:04

Yeah, thank you.

2:19:05

For the record, I do want to clarify that notice was provided to all property owners within the zoning districts by first class mail.

2:19:14

We ask for comment from everybody in that district whether it be by e-mail, MailOnline.

2:19:23

Nobody's comment was ignored or turned away.

2:19:27

We did do an analysis that showed where comments came from and showed that many of them were from South of the South side of the property that the pit area.

2:19:40

But we you have received all comments that have been submitted and none have been excluded or ignored.

2:19:48

Thank you.

2:19:50

Josh, did you want to say something just to be clear that we have read and heard all all these comments and our actions reflect that that those have been absorbed very much so.

2:20:06

And in my thinking about public interest, I very much hear from the neighbors how the existing pit is a very big has a big negative impact on their lives.

2:20:24

Public interest there seems to be to slow that down.

2:20:28

We we can't stop it.

2:20:30

We could slow it down.

2:20:33

There's my sense of public interest and and very counterintuitive, but by forcing the pit to behave better that I think that that's the greater public interest in terms of hardship.

2:20:45

I see the neighborhood as A at a hardship right now.

2:20:49

Having this in your neighborhood is indeed a hardship.

2:20:51

No one would wish for that.

2:20:54

Can we make it better in the 30 year short term hopefully.

2:20:58

So that's it.

2:21:05

Other comments, yeah, Slotnick, you, you referenced that allowing this use variance is in the public interest because that that the process and the approval requires mitigations of the concerns that folks raised today regarding impacts to wildlife and dust and water quality and quantity.

2:21:36

And so it is this kind of we've heard your concerns and the way to address them is by having these mitigations in place.

2:21:47

And I know that is Slotnick said cold comfort and it it, it doesn't seem right.

2:21:54

But to go forward and, and actually address these concerns to have wildlife buffers, those 300 foot wildlife buffers on those riparian areas of of Maple Creek and, and, and N to McLean.

2:22:08

I mean that that is where wildlife moves.

2:22:12

And in the future you're talking about winter range and habitat and and that will all come if this is approved.

2:22:20

But if it's not approved, then operations continue.

2:22:26

But there's there's no benefits of of these mitigations.

2:22:35

Yeah, the special conditions I I feel like in the staff report in the Western has been proposing feel like addresses and the neighbors concerns and the hardship in a very classical sense.

2:22:50

I mean this was referenced by McCormick or oh boy, Nope, I'm gonna get his name wrong.

2:23:00

It's a classical hardship is that Western can't access the material that it needs because of the zoning.

2:23:09

And you're like that's the point of zoning.

2:23:11

But this particular zoning, Part 1, allows for this process to happen.

2:23:19

And so we're going through this process and then ultimately, we'll get to mitigating folks's concerns.

2:23:29

And then I know Grammy, you talked about the spirit of.

2:23:33

So public comment is done.

2:23:36

Yeah.

2:23:37

Take a seat, Sir.

2:23:42

And I, I hear that he said that we're a bunch of sellouts.

2:23:45

And I absolutely understand how it feels and how it can look.

2:23:51

But ultimately we're going to be getting at, at what folks want us to be able to achieve with this proposal.

2:24:00

So, so I will jump in here and I will be supporting the variance request.

2:24:12

Having said that, let me run through a few items because this is this again is a case where the reason why this is the fifth public hearing is because we have taken these matters extremely seriously and we appreciate the engagement and involvement of of all parties sticking it out over this period of time.

2:24:34

We could have simply approve this at the public first public hearing and have been done with it.

2:24:39

But I think the length of time that we've invested in this is a reflection of the due diligence that we've tried to take and deliberating on this matter.

2:24:53

So when it comes to zoning variances, yeah, it is not lost on me that it is certainly perceived by many that that or at least some that what's the point of zoning if we're going to grant a zoning variance like this?

2:25:10

Well, zoning variances in this case are an allowable consideration and and it's something that from a process standpoint we have to take into consideration and it is a possibility.

2:25:23

Zoning is not so ironclad as to never allow at least this type of zoning to never allow a variance for a variety of reasons.

2:25:34

And that's what we're doing.

2:25:36

I also grant, Grant, the fact that the history of how we have gotten to where we are today is not completely crystal clear.

2:25:47

I wish it was.

2:25:48

We are not a judicial body up here.

2:25:50

I think folks would like us to be able to just directly take the question to the court system and and that is not something we have the ability to do.

2:26:01

And that is certainly the prerogative of some of you in the room to do that if you would like.

2:26:07

I also, I'm sensitive to the argument that what we're contemplating here is, is a zoning variance, variance that would benefit the greater good of the community and, and therefore it's something that should be approved.

2:26:26

Well, I'm, I'm sensitive that to that argument because I think we've seen in human history plenty of examples where minority voices have gotten rolled over and steamrolled by a majority that might not be looking out for those, those fewer voices.

2:26:47

And that might be a perception here today.

2:26:50

I would argue to the contrary, but I'm it's not lost on me that argument.

2:26:57

As far as some of the other questions and comments that have come up, water quality, I actually do feel that the GSI environmental analysis was sound and I was taken by the arguments made and was not completely convinced by the hydro solutions counter arguments.

2:27:23

In terms of other mitigations, whether it's a viewshed, wildlife noise, etcetera, potential impacts, I feel that the staff report has done a good job of mitigating those impacts.

2:27:37

When it comes to wildlife, I actually think that what is being proposed here provides a future corridor that might be better than a bunch of ranchets that chop up the landscape and actually make cause or create less permeability for large carnivores or other wildlife.

2:27:58

Currently and I know there's dispute over this, but based on our advice from our legal staff, our planning staff, this is a legal non conforming use as far as gravel mining at this side.

2:28:12

And if it is litigated the future, in the future as far as that status.

2:28:21

I think based on advice that we've heard, it is highly likely that this variance would be nullified by the court if it's determined that this is not a legal non conforming use currently out there.

2:28:36

And I'll be honest that if this was a request for this sort of use on a complete Greenfield site in a residential zoning district, I would be hard pressed to approve that.

2:28:51

It would probably be inclined not to.

2:28:53

But that is not where we are today with the existing gravel mining operation.

2:29:00

In terms of just some of the considerations that we need to take into account when we're contemplating something like this with this use of a variance be contrary to the public interest, I do not think so.

2:29:14

I think the mitigations offset the impacts and we're not here today taking this up folks in the neighborhood, you would be faced with none of the conditions over the next two decades that I think will make the situation out there better.

2:29:30

And my colleagues have hit on that also.

2:29:32

So there is I believe a direct public interest the doing this sources of gravel are not as great as some might indicate.

2:29:44

And in fact I would like to see less Greenfield development for gravel mining operations across this county.

2:29:53

Then then there might be otherwise if we don't allow this expansion, what are the special conditions that support allowing this variance?

2:30:02

Again, there is an existing gravel mining operation in effect.

2:30:08

I believe that some of the mitigations that are being proposed by way of conditions will address berms, dust, Traffic Safety, noise, hours processing, processing wildlife buffers, etcetera.

2:30:26

So I think the mitigations will address that.

2:30:29

How would literal enforcement of ZD 40 regulations result in hardship?

2:30:34

Well, in this case, I think the hardship is, and this is what we've heard of here before, this is going to be cold comfort, but the hardship is on the broader community did not allow this sort of variance to expand.

2:30:51

I'd say that well, I'll just, I'll just leave it at that.

2:30:56

And finally, how will the applicant or explain how the applicant has or has not mitigated address concerns raised by the public comment Again, per conditions of approval, I believe that impacts have been adequately mitigated.

2:31:13

Water quality and quantity has not been shown to be adversely impacted here by what is being proposed.

2:31:23

And with that, I think I will leave it as is any additional comment, just adding that the uniqueness of the topography and the the quality of the material that actually meets local, state and and federal standards is, is important for the greater community and it reduces costs well.

2:31:51

And I would say that if it was a hardship simply to the applicant, I would be not, I would not be inclined to support this zoning variance.

2:32:03

We should not, I think in cases like this simply be supporting the financial well-being of a single applicant.

2:32:13

I don't think that rises to the level of hardship in this case.

2:32:16

I think what does rise to the level of hardship would be sourcing this sort of material for the broader community and avoiding and limiting additional Greenfield development potentially in other residential areas.

2:32:32

And I don't buy the argument that, well, you could just go to the north and or somewhere close in proximity to an area that's not zoned that might also be residential in nature and planet there.

2:32:44

I don't think that's a particularly germane or or certainly not a compelling argument additional.

2:32:50

Thanks, Dave, you did a really good job.

2:32:52

I think I'm too emotionally constricted at the moment to speak as thoroughly and as well as you did.

2:32:56

Thanks.

2:32:57

Thanks for that.

2:32:58

I just want to say I'm not at all moved by Westerns need to make money.

2:33:03

The gentleman said we're sellouts.

2:33:04

This has nothing to do with I Western to me is like any other company.

2:33:09

Best of luck to you.

2:33:11

This has nothing to do with that additional discussion on the I guess we don't have a motion yet.

2:33:22

So and I know folks feel strongly one way or the other, but please be respectful of one another.

2:33:30

Jenny, could you pull up the motion please?

2:33:45

What I have done here is I have a split screen that and I can enlarge the the motion as well.

2:33:56

But just so you can see in making the motion what the changes in J&K are, I don't know if I can.

2:34:06

There we go.

2:34:13

If that's helpful.

2:34:13

You'll see what what the amended change from the Planning and Zoning Commission recommended to J&K.

2:34:19

OK, thank you.

2:34:23

Oh, I think we just read the text as written.

2:34:28

Is that correct, Jenny?

2:34:29

Yep.

2:34:29

To approve the request for a use variance in ZD #40 to allow the existing legal non conforming gravel operation to expand onto parcels legally described as Certificate of Survey 5565 parcels.

2:34:46

B&C Certificate of Survey 3935 in the southwest half of the northwest quarter of the southwest half, the north half of the southwest quarter of the southwest Quarter and the South half of the southwest quarter.

2:35:00

Southwest Quarter Township 23 Excuse me Section 23 Township 11 N Range 20 W.

2:35:07

Based on the application, the findings of fact and the conclusions of law found in the staff report and public comment and other informed submitted and other information submitted for consideration prior to an APP public meetings, subject to the conditions of approval as shown in the August 6th, 2024 memo and as amended, deleting second sentences of conditions #1J and #1K.

2:35:32

Is there a second?

2:35:33

I'll second that any further discussion on the motion?

2:35:38

And again, I would thank everyone for being respectful of one another and sticking this out over many, many months.

2:35:46

Any further discussion?

2:35:48

See.

2:35:48

None.

2:35:48

Let's go ahead and vote all those in favor Signify by saying aye, aye.

2:35:52

OK, the motion passes.

2:35:54

Thank you all for joining us today.

2:35:56

And is there any other business come before the Commission?

2:36:00

OK, we'll be adjourned.

2:36:01

Thank you.