

1 COMMISSIONER BENDER: It's kind of fun to hear
2 a full room of people say that. I haven't -- all
3 right. We'll go ahead. And just a reminder to
4 silence your cell phone. Listening devices are
5 available if you need them. And if you plan to
6 speak today, there's a sign-up sheet over in the
7 corner, if you could go ahead and sign in, that
8 will allow you to leave your address there and you
9 won't have to say it publicly. So with that, I'd
10 entertain a motion to approve the agenda.

11 COMMISSIONER BLEYENBERG: So moved.

12 COMMISSIONER KARSKY: Second.

13 COMMISSIONER BENDER: Motion and a second.
14 All in favor.

15 (Aye)

16 COMMISSIONER BENDER: Any opposed? Motion
17 passes unanimously. I need to recuse myself.

18 COMMISSIONER KARSKY: Look for a motion to
19 approve our consent agenda. So move.

20 COMMISSIONER KIPPLEY: Second.

21 COMMISSIONER KARSKY: Motion and a second.
22 Roll call vote, please.

23 SECRETARY: Beninga.

24 COMMISSIONER BENINGA: Aye.

25 SECRETARY: Kippley.

1 COMMISSIONER KIPPLEY: Aye.

2 SECRETARY: Bleyenberg.

3 COMMISSIONER BLEYENBERG: Aye.

4 SECRETARY: Karsky.

5 COMMISSIONER KARSKY: Aye. Motion carries.

6 COMMISSIONER BENDER: All right. So that
7 takes us to item 10, which is our first regular
8 business item, which is the item which I suspect
9 many of you are here for today. And I would like
10 to welcome you here. I'd like to apologize,
11 frankly, the fact that most of you had to come
12 back because of my absence at the May 23rd
13 meeting. And I was -- I was out of the country,
14 actually, visiting a relative who is ill and so it
15 was pretty unavoidable on my part. But,
16 nevertheless, I apologize, and to all of you that
17 you had to take some time away again to come
18 today, but I do appreciate you being here.

19 I want you to know that I did -- I actually
20 watched that meeting multiple times at this point.
21 I have looked at all of the information that was
22 provided and so I think I have pretty much the
23 same information as the other commissioners. I
24 would tell you it's a lot more intimidating to sit
25 here and watch all of you than it is to sit and

1 watch it on video because most of you don't appear
2 on the video. But it is good to see all of you
3 here today. I did really appreciate the
4 conversation. I thought that people were very
5 respectful. I thought that Dean Karsky did a --
6 Commissioner Karsky did an excellent job --

7 COMMISSIONER KARSKY: Thank you.

8 COMMISSIONER BENDER: -- moderating that
9 conversation and I hope I can rise to that level
10 today. But, you know, as you know, the reason
11 that we're here today is that one of the motions
12 to amend the ordinance ended in a tie vote. And
13 by state statute, that automatically put that vote
14 here today.

15 That particular amendment had an opportunity
16 for full public comment using the process that was
17 in place for all the amendments that day. But,
18 nevertheless, out of respect for all of you that
19 are here today, we will allow -- I've decided to
20 allow ten minutes for each of the proponents and
21 the opponents, focused on the one amendment that
22 is before us today, which is the amendment that
23 was proposed by Commissioner Kippley to change the
24 separation from 750 feet to 350 feet for
25 dwellings, churches, and business. That was the

1 particular amendment that ended in a tie vote.

2 And so I will allow, as I said, ten minutes
3 for each side and then I'll turn it over to the
4 commission for a vote on that particular
5 amendment. However, if further amendments are
6 offered and seconded, I will permit ten minutes of
7 limited additional public comment for both
8 proponents and opponents on any further
9 amendments. That additional public comment should
10 address the proposed amendment only.

11 You know, just by way of information, we had
12 the luxury at the last May 23rd meeting to pretty
13 much clear our agenda so that we could focus on
14 this one particular issue. We did not have that
15 luxury today. And, in fact, we go into a meeting
16 on our 2024 budget starting at 11:30 today. And
17 so, you know, we are under more time constraints
18 today than we had at the last meeting and so we
19 are going to try to limit the public comment just
20 to the amendments that are proposed.

21 Any person who wishes to make public comment
22 must sign in prior to speaking. Those speaking on
23 behalf of the group or entity should both note
24 such representation at the outset of their
25 comments and indicate such representation on the

1 sign-up sheet. All persons wishing to make public
2 comment will be allowed three minutes within the
3 time allocations that I described. However, if
4 either the proponents or the opponents are
5 represented by legal counsel or another
6 spokesperson, any representative may, at my
7 discretion, and with the time allocations that I
8 discussed, be granted additional time. To avoid
9 repetition and afford as much time as possible to
10 the other interested parties, those individuals
11 wishing to indicate their support and agreement
12 for any prior comments may give their name and
13 just simply state that I agree. Those rules, for
14 those of you that were here or have watched the
15 May 23rd meeting should sound fairly familiar
16 because it's pretty much the same process that we
17 used at that particular meeting.

18 So if there aren't any questions from the
19 commissioners, I would go ahead -- I would go
20 ahead and invite anybody who would like to speak
21 in favor of the -- I think the way we're doing it
22 is in favor of the ordinance as amended. That's
23 the proponents. So anybody who wants to come
24 forward and speak in favor of the ordinance as
25 amended, you're welcome to come forward.

1 Okay. Is there anybody who would like to --
2 not seeing anybody moving, so is there anybody who
3 would like to speak against the amendment? I'll
4 give that group ten minutes. Go ahead.

5 MR. BONANDER: Good morning, Commissioners.
6 Rick Bonander from Valley Springs. The
7 Declaration of Independence states that we hold
8 these truths to be self-evident, that all men are
9 created equal, that they are endowed by their
10 creator for certain unalienable rights, that among
11 these are the life, liberty, and the pursuit of
12 happiness.

13 Property owners, whether in cities or the
14 county, have the right to develop their property.
15 And, of course, economic development is the reason
16 we're here today.

17 According to Princeton University, the pathway
18 to net zero by 2050 will require almost
19 70,000 miles of pipeline infrastructure. So as
20 you can see, we are just at the beginning stages
21 with regard to transporting CO2 for sequestration.
22 There will be more CO2 projects that will be
23 crossing Minnehaha County.

24 Ordinance MC16 demonstrates intelligent land
25 use that will enhance future economic development.

1 It still allows the ethanol companies to collect
2 for 45Z tax credits and Summit and Navigator to
3 collect their 45Q tax credits. This ordinance
4 stays within the parameters of the county has to
5 -- has the authority to regulate.

6 Conversely, this ordinance does not infringe
7 on any other government regulating authority.
8 This ordinance was written by the Minnehaha County
9 State's Attorney's Office, planning and zoning,
10 and passed unanimously by the planning and zoning
11 commission. Ordinance MC16 is a statute that our
12 competent State's Attorney's Office, along with
13 planning and zoning, will be able to defend in
14 court. Therefore, I would like to congratulate
15 the State's Attorney's Office for their
16 professional approach to drafting this ordinance,
17 the planning and zoning department for having the
18 foresight and vision for intelligent usage for
19 economic development, and the planning and zoning
20 commission for having the courage to pass an
21 ordinance unanimously on to you, the Minnehaha
22 County Commission. I, therefore, respectfully ask
23 that you pass this ordinance as written by staff.
24 Thank you.

25 COMMISSIONER BENDER: Thank you.

1 COMMISSIONER KARSKY: Madam Chair.

2 COMMISSIONER BENDER: Yes.

3 COMMISSIONER KARSKY: Just for clarification,
4 these would be proponents of the ordinance;
5 correct?

6 COMMISSIONER BENDER: The way we -- the way I
7 set it up is that this is -- these are people who
8 are opposing the amendment, which is what is
9 currently in front of --

10 COMMISSIONER KARSKY: Opposing the amendment,
11 but proponents of the ordinance? Okay.

12 COMMISSIONER BENDER: I think that would be
13 fine to put it that way.

14 COMMISSIONER KARSKY: Okay.

15 COMMISSIONER BENDER: Good morning.

16 MS. BURKHART: Good morning. Kay Burkhardt. I
17 agree with everything that Rick just said. And
18 mostly that's what I had written, that we really
19 think the State's Attorney's Office and the
20 planning and zoning had done a really good job.
21 They know, they understand Minnehaha County and
22 our needs, and I think they really tried their
23 best to satisfy both the residents as well as the
24 pipeline companies.

25 The one comment I would add is remember that

1 if the setbacks seems too confining in an area,
2 the pipeline still do have options. They can ask
3 for a waiver from the landowner or they can apply
4 for a conditional use permit, so it's -- you know,
5 there are some options for the pipeline. Thank
6 you very much for all the time you guys have spent
7 on this.

8 MS. HOHN: Good morning, Commission. My name
9 is Joy Hohn, Hartford. We want to thank you,
10 again, for your time and commitment to our
11 community to establish a reasonable setback for
12 hazardous pipelines. We may not always see
13 eye-to-eye on this or other issues, but we respect
14 your attention to what is ultimately a question of
15 protecting the orderly development of our
16 community. Intelligent setbacks are one of the
17 few opportunities for local control. We must
18 protect future economic development.

19 I would like to highlight the video I sent to
20 you last week. Recently on May 16th of 2023,
21 Navigator representatives gave a briefing to the
22 Pocahontas County, Iowa, supervisors. According
23 to Navigator's own expert discussing the buffer
24 zones, the setbacks that he recommended are
25 greater than 750 feet. This ordinance gives

1 options for companies to obtain lower setbacks by
2 advocating that the company negotiates in good
3 faith with landowners for waivers and/or applying
4 for a CUP. If the company has documentation to
5 approve a lower setback, this ordinance allows
6 that. This is intelligent land use at its best.
7 Therefore, the county should approve the ordinance
8 as written by your planning and zoning experts and
9 not go below 750 feet.

10 A lot has been said learned from the PHMSA,
11 the Pipeline Hazardous Materials Safety
12 Administration, over the last week while they were
13 in Des Moines, Iowa, listening to concerned
14 citizens and elected officials. Repeatedly it was
15 confirmed that they have no jurisdiction over
16 setbacks, and that the important work we are
17 discussing here today is 100 percent in your
18 hands.

19 So how do we reach intelligent setback
20 distances? How can we be comfortable with numbers
21 approved today that make sense? The county's
22 existing setbacks on wind towers, cell phone
23 towers, and CAFOs are all greater than what is
24 being proposed in today's ordinance.

25 I think we can all agree that the stigma,

1 perception, and, frankly, reality of a very high
2 pressurized large hazardous pipeline is very
3 likely to chill development more than the
4 existence of a wind or cell phone tower. If we
5 can agree on that, then we've agreed that the
6 setbacks related to dwellings needs to be greater
7 than those for wind and cell phone towers.

8 Let's look at CAFOs, the 1,500-foot setback.
9 CAFOs are primarily criticized for their odor, so
10 I ask you to consider perceptions and stigmas and
11 the real concerns associated with hazardous
12 pipelines, particularly the CO2 pipelines can have
13 as chilling of an affect on the orderly
14 development of our community as a CAFO.

15 I think the argument can be made based on the
16 growing education and concern around hazardous CO2
17 pipelines that a greater setback than 1,500 feet
18 is appropriate.

19 At the end of the day, we the people, many who
20 are also small business owners and employers, want
21 our communities to grow to -- to continue to grow
22 and lead the way for South Dakota. But to do so
23 we need you today to think long-term and to select
24 setback distances that ensure economic growth, not
25 just for one or two CO2 companies, but for the

1 thousands of more brick and mortar business and
2 homebuyers who have a choice of whether or not to
3 come to our county in the future. Doing the right
4 thing requires a long-term view. Please don't
5 stifle growth with watered-down setbacks. Please
6 pass the proposal before you. Thank you for your
7 time.

8 COMMISSIONER BENDER: Thank you. I can't see.
9 Is there anybody besides -- so we have about three
10 minutes and 20 seconds left, so I don't know if
11 you guys can allocate your time appropriately,
12 but --

13 MS. NICHOLS: Good morning, Commissioners. My
14 name is Linda Nichols. And I kind of ditto with
15 everything that they said. What I wanted to talk
16 about is kind of the easement activity. I have a
17 picture of -- we have the Dakota Access -- Dakota
18 Rural Access, we have a shut-off valve on our
19 property and I just wanted to talk about that a
20 little bit.

21 This easement is a lifetime. It's forever.
22 There will be an invasion of landowner privacy
23 forever. With all the advancements in technology
24 with the planes, helicopters, drones, or who knows
25 what's next, invading or recording private

1 property outside of the easement area. Even when
2 pipe is buried below the ground, there's pump
3 stations and shut-off valves above the ground.

4 As I said, we have the Dakota Access shut-off
5 valve in our property and we've experienced
6 disruption on the easement activity on the
7 easement land. Our dogs bark all the time.
8 There's been vandalism on the shut-off valves.
9 Pipeline staff routinely check that area creating
10 extra traffic. We also have extra traffic that
11 think it's a driveway that causes -- I have two
12 children at home and it -- all that extra activity
13 causes some anxiety for safety. So thank you
14 again for your time and please pass this ordinance
15 as developed by the State's Attorney's Office.

16 COMMISSIONER BENDER: Thank you. We're down
17 to two minutes.

18 MS. LEMS: All right. Good morning. I'm
19 Carla Lems, elected official from District 16.
20 The elected officials in Bismarck as well as their
21 homeowners association are concerned that the CO2
22 pipelines choking the development of their city
23 and have been very public with their ideas
24 provided to protect their citizens.

25 Even if you could prove that CO2 pipelines are

1 100 percent safe, the perception of living by one
2 is very concerning to many people. I know as I've
3 heard these concerns. I just read an e-mail last
4 night from a landowner who says this will be
5 200 feet from his home. There are people just now
6 hearing about this and they are very alarmed.

7 Land values of those who have invested heavily
8 in their property for future use should be a
9 concern for Minnehaha County. While I do own
10 property in Minnehaha County, an example I
11 personally speak to is property we have in Lincoln
12 County that was to be sold on auction. After all
13 the advertising was in play, we got notice that
14 the CO2 pipeline had plans to come through. We
15 ended up no-sale'ing that property, which included
16 a building eligibility.

17 This is a very real issue for your
18 constituents. An absolute minimum of 750 feet
19 setback to protect property values is needed.
20 Please ensure the rights of the citizens you
21 represent. Their right to life, liberty, and the
22 pursuit of happiness, the first priority of
23 elected officials should be to secure these
24 rights. Thank you.

25 COMMISSIONER BENDER: Thank you. We have

1 20 seconds left, gentlemen.

2 MR. MEYER: My name is Gary Meyer, Minnehaha
3 County. There is a first responder from Satartia,
4 Mississippi, that says when he arrived on the
5 scene, everything was froze solid within 1,000
6 feet. This is not a replica of the pipe. This is
7 a replica of the actual size that they're
8 proposing to put through Minnehaha County. How
9 many of you would build your house within
10 1,500 feet of this pipe pressured at over 2,000
11 pounds per square inch, let alone 330 feet?

12 COMMISSIONER BENDER: Okay. I'm sorry. We're
13 out of time. I'm very sorry. Honestly, I wasn't
14 going to give any time because we had an
15 opportunity to provide public comment on this and
16 out of respect for you, I did provide the ten
17 minutes. So, with that, I am going to turn it
18 over to the commission because there wasn't
19 anybody here that wanted to speak in favor of this
20 amendment. Commissioner Karsky.

21 COMMISSIONER KARSKY: I have a question for
22 Scott, if I may, Scott, put you on the spot. So
23 let's talk about the conditional use permit, the
24 CUP, and how it relates to any setback. So if we
25 do, let's just say, 750-foot setbacks and somebody

1 agrees to the pipeline that they would allow them
2 to be within 300 feet. At that point, do they
3 need a conditional use permit?

4 MR. ANDERSON: No. If they obtained a waiver,
5 that is part of the requirements of the -- that
6 would allow them to. If -- so the circumstances
7 that would require a CUP is if the pipeline is
8 going to be 300 feet away or 200 feet away and
9 that property owner does not want to sign a
10 waiver, then the next option would be the
11 applicant, whichever pipeline company that would
12 be, or any pipeline company, would then file for
13 the conditional use permit, which then would take
14 it to the planning commission for a hearing on
15 that 200-foot setback instead, or reduction.

16 COMMISSIONER KARSKY: So why have a setback if
17 it can be appealed through a conditional use
18 process? I mean, what's the advantage of having
19 that setback? I guess I'm just -- I mean, it
20 almost seems like an eminent domain type of factor
21 because, you know, they're saying we don't want to
22 abide by that setback here, we want to go here, so
23 we are circumventing that process, I guess, is
24 what I'm thinking.

25 MR. ANDERSON: I think you have a two-prong

1 question. One is really -- involves eminent
2 domain. One involves, you know, the planning
3 commission process. But I wouldn't say it's
4 eminent domain because even if the planning
5 commission and the county board were to reduce it,
6 through the conditional use permit process, reduce
7 that setback, and that property owner still felt
8 aggrieved, they could go to circuit court and so
9 there is further recourse. We're not -- the
10 planning commission and county commission isn't
11 the final say, per se, on that conditional use
12 permit or that reduced setback.

13 And why you have a setback or why you have a
14 setback at all is because if they're able to meet
15 that setback and they plan accordingly, it's just
16 a permitted use. You don't even have to -- you
17 don't even have to apply. Is it likely that that
18 is going to occur? I am skeptical given the --
19 the -- you know, the miles, the 17 to 25 miles
20 that they're going to potentially travel through
21 the county, will they be able to get -- will they
22 be able to meet that setback? I don't know. And
23 it depends on how cooperative or willing property
24 owners are to sign a waiver perhaps.

25 COMMISSIONER KARSKY: Okay. Thank you.

1 COMMISSIONER KIPPLEY: Madam Chair.

2 COMMISSIONER BENDER: Commissioner Kippley.

3 COMMISSIONER KIPPLEY: And that's probably a
4 good jumping off point, Scott. Maybe we should
5 look at the maps to compare what we're even
6 talking about here between 750 and 330.

7 MR. ANDERSON: So I did provide some maps in
8 the material today and if -- I think Trish will
9 pull them up for us. This shows -- if you want
10 to -- so that -- if you could scroll down to the
11 bottom of it, the legend of that map, Trish, then
12 I can -- so this shows the 750-foot distance
13 measured from parcel lines from the property lines
14 and it also shows the buffer. As you can see,
15 there's some buffers around different parks and
16 municipalities. And then if you go to the next --

17 COMMISSIONER KIPPLEY: Scott, can you -- can
18 you verify, which version are we looking at?

19 MR. ANDERSON: This is the --

20 COMMISSIONER KIPPLEY: That's the 330.

21 MR. ANDERSON: That's the 330? I don't have
22 the -- it's hard to --

23 COMMISSIONER KIPPLEY: That's 330 measured to
24 the address.

25 MR. ANDERSON: Yeah. Okay. So the -- that's

1 the 330. If you click on that again, Trish,
2 that's the 330. If you scroll down one more, I
3 think that's 330 from the parcel. And if you go
4 one more down, Trish, maybe the 750 is the next
5 one in there. Yeah. This is the 750.

6 COMMISSIONER KIPPLEY: Yes, so that's --

7 COMMISSIONER KARSKY: In the -- 330 from
8 property at or from the boundary --

9 MR. ANDERSON: Parcel --

10 COMMISSIONER KARSKY: -- parcel boundary, and
11 330 from the --

12 MR. ANDERSON: Structure, the address point.

13 COMMISSIONER KARSKY: -- structure -- and this
14 is 750 from the --

15 MR. ANDERSON: Yes. From the parcel line.

16 COMMISSIONER KIPPLEY: So this is what I want
17 to -- I think in response to Commissioner Karsky,
18 this is part of my problem with the 750 and just
19 the procedural elements of going from a permitted
20 special use to a conditional use permit. If we
21 stick with this, largely, we've blotted out the
22 whole county such that we might as well -- I mean,
23 to take it to its logical conclusion, and
24 especially some of the public comment says, you
25 know, maybe we should go even higher, you know,

1 1,500 comparing to other types of setbacks,
2 basically this is to say there is no special
3 permitted use, go straight to conditional use
4 permit. And I think that takes away a leverage
5 piece we have with pipeline companies in the
6 present and in the future to have them sit down
7 with us and have a rational conversation. Because
8 I think if we pass this, they'll just come back
9 with, Here is where we want to go, and there's --
10 we'll just go straight to the conditional use
11 permit process. I don't see that we're giving
12 them an incentive to try to engage with us on a
13 sensible setback process. So that's -- that's
14 kind of my practical critique of the 750 or any
15 number higher than that.

16 And then, again, my basis for the 330 -- and I
17 think we're looking at, Trish, if we go to the
18 other 330, that -- what you were showing was kind
19 of my original preference in the amendments, and
20 then this is what we -- Commission Karsky and I
21 think had a good back and forth a couple weeks ago
22 about the parcel line. And we can re-debate that
23 if we want to. But sticking on point of just the
24 measure of the distance, not the methodology of
25 the measurement, I had brought up the -- PHMSA's

1 own guidelines on evacuation. And we can talk
2 about the diameter of the pipe, we can talk about
3 all these specifications that PHMSA is in charge
4 of, though, so we can't -- whether a bigger
5 diameter pipe would have a bigger dispersion
6 model, that's just not for us to say.

7 The only number I can come up with that has an
8 impact on land use would be in the event of an
9 incident, what buildings would we need to
10 evacuate? Otherwise, whereas a CAFO has 24/7
11 implications for neighbors. A wind tower, 24/7
12 implications for neighbors. A pipeline under the
13 ground, we all hope it never really has
14 implications for neighbors. So the only incident
15 we can come up with is not an odor or a sightline
16 or something that we traditionally consider with
17 different setbacks or things like CAFOs are noise,
18 it's really just if an incident happens.

19 And the only guideline we get from the feds
20 that supposedly will preempt us on other things,
21 so I just want to go by what they're telling us,
22 they say we would advise you to come upon the
23 scene and evacuate for the 330 feet. So I feel
24 like we -- I want to empower Scott and the
25 planning office to say, If you're requesting a

1 building permit in the future within these areas
2 that are highlighted here, we might want to have a
3 conversation about how you're building within
4 330 feet and the feds are going to say you're in a
5 potential area that if an incident does happen,
6 God forbid, this -- you might have to contemplate
7 that what -- this type of structure you're
8 building is in an evacuation area.

9 So that's -- I feel like we're on the firmest
10 ground all the way around. And I think it gives
11 us some practical consideration with the pipeline
12 companies to sit down and say, Hey, how are you
13 routing this through? Are you working in good
14 faith to get potential waivers? Can we be part of
15 that local process, that local control element
16 here?

17 So when I just compare this map with the 750
18 map, I feel like this one at least gives us some
19 skin in the game with the pipeline companies that
20 we can actually assert any authority we do have.
21 I think it is a limited authority here. We're not
22 the safety police. We're not the PUC. We do
23 have -- I think the county does have some
24 legitimate routing authority, but it -- it's
25 pretty well prescribed that I don't think we can

1 just pick a number out of the hat, and I don't
2 think we can -- 750, I think, is already getting
3 to the point of too high and I don't know what
4 basis we have. And so the 330 is me looking for a
5 basis that is defensible and practical. So those
6 are my initial comments, Madam Chair.

7 COMMISSIONER BENDER: Other comments from the
8 commission? Commissioner Bleyenberg.

9 COMMISSIONER BLEYENBERG: In regard to Joe's
10 point, I just wanted to mention that I feel like
11 the 750-foot map gives the incentive more to the
12 pipeline to work with landowners in a responsible
13 manner. I think the ordinance lays out the
14 options that they have, if that isn't ideal, if
15 the map doesn't look ideal. Also, I think that
16 when you zoom in a little bit more, if you look at
17 the township-by-township map, this -- this looks
18 pretty constrictive, but it -- when you get closer
19 in there, it's not as difficult as it looks. But
20 I think those guidelines for the landowner to
21 waive that setback is built in there for that
22 reason, to make -- make room for those things.

23 I also just wanted to bring up the economic
24 development point. I don't think any of our goal
25 is to limit economic development in the county in

1 the least, but I feel like this ordinance really
2 helps to channel the growth and the development in
3 a way that we would want to see it go.

4 And then I really just fall back on, again, I
5 think I mentioned this last time, but I feel that
6 it would not be appropriate for me to assume that
7 I have more knowledge about this than the State's
8 Attorney's Office and the planning and zoning
9 office. I just -- I have a lot of confidence in
10 the work that they did.

11 COMMISSIONER BENDER: All right. Thank you.
12 Anyone else?

13 COMMISSIONER BENINGA: Well, I'll add to the
14 confusion. I originally asked the state's
15 attorney for information about going back to 1,000
16 feet. I know that that's probably a waste of time
17 at this point. I've done my homework.

18 I am curious, though, why Iowa and the
19 Navigator program approved and said in their video
20 that they have no problem with 1,500. That
21 confuses me a little bit. I do disagree that
22 there is some issues with economic development and
23 property values because, as one of the individuals
24 already said, there's an issue with pipelines
25 going through a property that wasn't salable.

1 I also think that we do have options with a
2 CUP. I think 750 is going to have to be a
3 compromise. Not totally happy with that, but
4 that's where I am at at this point.

5 COMMISSIONER BENDER: All right. Well, thank
6 you. So -- because I'm the one that hasn't had an
7 opportunity to weigh in on this publicly yet, I
8 just would say that I -- when we talked about
9 trying to see what we could do as a county to
10 bring forward a planning ordinance that, in my
11 mind, would balance the interest of the people
12 with -- who are sharing space, which is a lot of
13 what planning and zoning is, it's intelligent land
14 use, trying to balance the interest of various
15 competing interests.

16 My goal was not to shut down pipelines. And
17 my goal was to try to balance those interests.
18 And so I would have to tell you that my initial
19 reaction to the map was very much similar to what
20 Commissioner Karsky -- or what Commissioner
21 Kippley said. It looks to me like it does away
22 with the special permitted use. It -- it would
23 make it virtually impossible to thread through the
24 county, and that was not my goal. And so I think
25 that overall -- obviously, people I respect a lot,

1 a lot of you are in this room, clearly I respect
2 the commissioners I serve with, and we make tough
3 decisions all the time. Reasonable people can
4 very much disagree on this. But I don't think the
5 pipelines hinder development.

6 I mean, Williams pipeline goes through the
7 mall area. It's the most heavily developed area
8 in Minnehaha County. I've talked to real estate
9 professionals and they don't have -- they don't
10 see pipelines coming up as being generally -- not
11 that individual people might not have different
12 ideas, but generally they do not affect the value
13 of property, so I'm not -- I'm not compelled by
14 that argument either.

15 I think that the 330 feet allows us to, you
16 know, provide -- not what everybody wants, not as
17 much as people want, but something. And then it
18 allows for the conditional use permitting other
19 than that. And so to me, it's not perfect, but
20 I think it's the best that we can bring forward
21 today. I do think we want to get an ordinance
22 passed before the PUC process starts so that
23 everybody understands the rules of the road
24 here in Minnehaha County, and so I will be
25 supporting this amendment.

1 Any further discussion? If not, I would call
2 this amendment and ask for a roll call vote.

3 SECRETARY: Kippley.

4 COMMISSIONER KIPPLEY: Aye.

5 SECRETARY: Beninga.

6 COMMISSIONER BENINGA: No.

7 SECRETARY: Bleyenberg.

8 COMMISSIONER BLEYENBERG: No.

9 SECRETARY: Karsky.

10 COMMISSIONER KARSKY: Aye.

11 SECRETARY: Bender.

12 COMMISSIONER BENDER: Aye. Motion passes
13 three to two. So that takes us -- I think there
14 was a clean-up amendment we needed to address
15 maybe. Is there any other amendments or anything
16 that people want to bring forward?

17 COMMISSIONER KIPPLEY: I'd look to the --
18 Madam Chair, I'd look to the state's attorney. We
19 worked on one clean-up, if Eric would like to
20 describe that to us.

21 COMMISSIONER BENDER: Okay.

22 MR. BOGUE: Members of the commission, Eric
23 Bogue, State's Attorney's Office. As commented,
24 there's -- the first amendment was offered at the
25 previous meeting, changed some of the language in

1 the ordinance as drafted, inserted a phrase
2 referencing a letter of intent or a notice of
3 intent. As my comments would indicate from the
4 last meeting, I wasn't sure how that quite fit in
5 properly with the ordinance as drafted or with the
6 existing planning ordinance that the county has,
7 so I've drafted an amendment. I've distributed
8 that amongst all of you. We'll put it up on the
9 overhead. It does not change the intent, I
10 believe, and I've met with Commissioner Kippley on
11 that point to make sure it's consistent with his
12 original intent. It just changes the language and
13 the nomenclature a little bit to make sure it fits
14 appropriately within the existing draft. Thank
15 you.

16 COMMISSIONER BENDER: Thank you. Any
17 questions for the State's Attorney?

18 COMMISSIONER KIPPLEY: Madam Chair, I guess I
19 can expand upon that, that basically I had come
20 originally two weeks ago with this, again, kind
21 of -- again, to describe this ordinance, we kind
22 of have three component parts. There was the
23 process of application, there was the restrictions
24 on that, as in setbacks, and then there was the
25 CUP process if the process led to that third

1 point.

2 On that first point we were trying to work
3 with some aspects of the application that either
4 seemed onerous or duplicative and so we had a few
5 different moving parts in that amendment.
6 Originally I had come up with language describing
7 a letter of intent, basically merely the pipeline
8 just saying, Hey, we would like to have a pipeline
9 in your county, and then that would trigger a
10 burden on our planning and zoning to then request
11 documents and whatnot.

12 I think that was another one where
13 Commissioner Karsky and I had some good dialogue
14 that maybe that's not the right fit and we would
15 like some balance between whether this is a true
16 full application that they have to dump a whole
17 bunch of paper on us or -- so I think this was
18 kind of meeting in the middle. So this still fits
19 in the -- gets rid of the letter of intent
20 language and just goes to notice -- to put us on
21 notice of the application to the PUC which then
22 triggers all the prescribed paperwork.

23 So, again, I think this is just a clean-up to
24 get rid of remnants of letter of intent language
25 and going to the application process. So if

1 that's a fair assessment, that's what I had.

2 COMMISSIONER BENDER: So our technology is
3 failing us today. But all the commissioners do
4 have a handwritten -- or have a typed-up copy of
5 this amendment showing the changes. Basically
6 "letter of intent" was struck and different
7 language was used, more in the idea of a notice, a
8 written notice. Any questions by the
9 commissioners?

10 COMMISSIONER KARSKY: Is there action that
11 needs to be taken to clean it up?

12 COMMISSIONER BENDER: I believe we'd want to
13 take an action to accept the -- this amendment to
14 this section 12.18A.

15 COMMISSIONER KIPPLEY: I am prepared to make
16 the motion to approve amendment SAO-01.

17 COMMISSIONER KARSKY: Second.

18 COMMISSIONER BENDER: Motion and a second.

19 Any further discussion? Role call vote, please.

20 SECRETARY: Kippley.

21 COMMISSIONER KIPPLEY: Aye.

22 SECRETARY: Karsky.

23 COMMISSIONER KARSKY: Aye.

24 SECRETARY: Bleyenbergl.

25 COMMISSIONER BLEYENBERG: Aye.

1 SECRETARY: Beninga.

2 COMMISSIONER BENINGA: Aye.

3 SECRETARY: Bender.

4 COMMISSIONER BENDER: Aye. Motion passes
5 unanimately. Thank you. All right. Any further
6 comments, questions, amendments prior to the --
7 the one item that for sure we need to do is take
8 action on the entire ordinance as amended.

9 COMMISSIONER BLEYENBERG: Madam Chair.

10 COMMISSIONER BENDER: Commissioner Bleyenber.

11 COMMISSIONER BLEYENBERG: I just had a
12 question. We didn't discuss -- is there changes
13 on 12-18B-9?

14 COMMISSIONER BENDER: That was all part of the
15 amendment that we just did.

16 COMMISSIONER BLEYENBERG: Okay. Thank you.

17 COMMISSIONER BENDER: Sorry. I could have
18 been more clear in my language. I appreciate you
19 pointing that out. Anything else? Commissioner
20 Kippley.

21 COMMISSIONER KIPPLEY: Madam Chair, just
22 closing comments before we go to a final vote.
23 This has been an incredible learning opportunity.
24 I appreciate all four of my colleagues having good
25 conversations in good faith. I think we've had --

1 probably with each of you I've had difference of
2 opinion, but we haven't been disagreeable with one
3 another along the way.

4 I think we've gotten lots of feedback from
5 constituents, which has been, again, a great
6 learning experience. I don't know that I am
7 probably -- with the positions I've taken, I
8 probably fall somewhere in the middle of all that
9 feedback. I don't know that I've found a way to
10 make everyone happy. There's kind of some
11 mutually exclusive positions on this and that's --
12 such as work, especially in the planning and
13 zoning area, you've got disputes between neighbors
14 and these can be very personal interest. And I
15 think as Commissioner Bender kind of highlighted,
16 there's a balancing of interest there and that
17 creates a difficult process.

18 But I think what I owe most to my constituents
19 is my judgment and kind of independent thinking to
20 find a middle ground that protects certain
21 interest and also allows us to stay in our lane is
22 -- it's kind of the thing I've most emphasized is
23 that a county just doesn't have a lot of authority
24 in this area, but I have more confidence than ever
25 that we're kind of striking in on something that's

1 reasonable, that we can get across the finish line
2 here today and also defend in any legal processes,
3 but also defend as just a good faith effort to
4 work with folks that want to do business in our
5 community.

6 So I am -- I don't know that any one of us is
7 fully satisfied with this, but I think it's a good
8 first step of getting us into this arena and
9 working constructively both with landowners and
10 pipeline companies in a reasonable fashion. So
11 I'll be voting in favor on final passage for the
12 ordinance.

13 COMMISSIONER BENDER: Thank you. Anyone else?
14 Commissioner Karsky.

15 COMMISSIONER KARSKY: Thank you, Madam Chair.
16 In my 12 years of being an elected official in
17 other capacities, I've had votes on items that
18 have had impacts of hundreds of millions of
19 dollars to our community and our county. This one
20 truly is the most difficult. There's a lot of
21 unknown, you know, a lot of input. I've never had
22 so much input from the community. And it was
23 50/50. I mean, truly, the e-mails, the phone
24 calls, it -- half went each way. So it's
25 understandable the emotion that goes into this.

1 Just this morning I had text messages from two
2 different state senators asking me not to do any
3 action on this. And I had, in previous weeks,
4 other state legislators that have done the same
5 thing. So, I mean, we have other legislators that
6 are here asking for action. Just -- the
7 indication is with how split things are with this
8 vote and with what's going on here.

9 I am in favor with the ordinance of the
10 330-foot setback and I will vote for it, primarily
11 because there is a precedence here with the PHMSA,
12 or however you want to say it, you know, we can
13 refer back to where are we getting our
14 information. It's not something that we decided
15 was a reasonable number. This is, I think, a
16 defensible number if it should come to that. It
17 allows a setback that most people can understand
18 and live with. So I will be voting in favor of
19 it, as difficult as this entire process has been.

20 COMMISSIONER BENDER: Anyone else? I think
21 the rest of the commissioners, we've all had an
22 opportunity to talk about it. I would echo
23 Commissioner Karsky, this has been a significantly
24 difficult issue and it -- I remember Commissioner
25 Bleyenbergh saying something at the meeting that I

1 watched so many times about how a good compromise
2 means nobody leaves happy. I think -- I think
3 we're going to at least hit the last part of that.
4 But, anyway, if there are no further comments, I
5 would entertain a motion to approve ordinance
6 MC16-179-23 as amended.

7 COMMISSIONER KIPPLEY: So moved.

8 COMMISSIONER KARSKY: Second.

9 COMMISSIONER BENDER: We have a motion and a
10 second. Role call vote, please.

11 SECRETARY: Kippley.

12 COMMISSIONER KIPPLEY: Aye.

13 SECRETARY: Karsky.

14 COMMISSIONER KARSKY: Aye.

15 SECRETARY: Bleyenberg.

16 COMMISSIONER BLEYENBERG: Aye.

17 SECRETARY: Beninga.

18 COMMISSIONER BENINGA: No.

19 SECRETARY: Bender.

20 COMMISSIONER BENDER: Aye. Motion passes four
21 to one. All right. Thank you. Out of respect
22 for all of you, I am inviting you to stay for the
23 rest of our meeting, but if you want to leave, I
24 am going to give about a five-minute break here so
25 folks have an opportunity to leave. I would admit

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that it's important things we're doing, but not quite as exciting as this particular issue.

(End of Transcription)