

**LAWRENCE COUNTY COMMISSIONERS MEETING – June 9, 2020 page-1**

Chairman Brandon Flanagan called the regular meeting of the Lawrence County Commissioners to order and the Pledge of Allegiance was conducted at 8:00 a.m. on June 9, 2020 in the Administrative Annex Building of the Lawrence County Courthouse located at 90 Sherman Street, Deadwood, SD with Commissioners Randall Rosenau, Daryl Johnson, Richard Sleep and Randy Deibert present.

All motions were passed by unanimous vote, by all members present, unless stated otherwise.

**AGENDA:** Moved-Seconded (Rosenau-Flanagan) to approve the agenda as amended. Motion Carried.

**DECLARE CONFLICTS AND DISCLOSURES:** Commissioner Deibert declared a conflict with the 9:30 a.m. agenda item: Petition for Improvement of Section Line and Agreement for Improvement of Section Line Highway

**MINUTES:** Moved-Seconded (Rosenau-Deibert) to approve the minutes of May 26, 2020 County Commission meeting. Motion Carried.

Moved-Seconded (Rosenau-Deibert) to approve the minutes of June 4, 2020 County Commission Special meeting. Motion Carried.

**PERSONNEL:**

**SHERIFF:** Moved-Seconded (Deibert-Johnson) to approve William Weber as a part-time fill-in Correctional Officer II G2 at a base rate of \$20.86 an hour, effective May 29, 2020. Motion Carried.

Moved-Seconded (Deibert-Johnson) to approve Tyler Soone as a full-time permanent Correctional Officer I G1 at a base rate of \$19.26 an hour, effective May 24, 2020. Motion Carried.

**AUDITOR'S ACCOUNT WITH TREASURER REPORT:** Moved-Seconded (Deibert-Sleep) to accept the Auditor's Account with the County Treasurer. Motion Carried. As of May 31, 2020; showed the following: Total amount of actual cash-\$1,350.00; total amount of checks and drafts in Treasurer's possession not exceeding three days (check deposit in transit)-\$133,362.53; total amount of cash in transit in Treasurer's possession (cash deposit in transit)-\$1,066.80; petty cash-\$1,860.00; total amount of deposits in bank include: CD's-\$1,000,000.00; bank balance \$16,453,154.33; money market \$10,940,950.58. Total \$28,531,744.24. Motion Carried.

**CROW PEAK BENCH ROAD DISTRICT:** The Board discussed the proposed Crow Peak Bench Road District Petitions, but no action was taken as the Petition is subject to review at the City of Spearfish pursuant to SDCL 31-12A-5.1.

The Board acknowledged receipt of emails from Larry Andrews, Jessy Dietrich, David J. Nuenke and Robert Deis speaking in opposition of the Road District and Randy Sachau speaking in favor of the Road District. Lonnie Braun, attorney for Robert M. Deis and David J. Nuenke, submitted a letter in hopes to reach an amicable solution to the folks who have maintained and improved Gobbler Road since it was built.

**ALCOHOLIC BEVERAGE LICENSE/TRANSFER:** A public hearing was held on the applications to transfer a license to sell intoxicating liquor (retail and Sunday on-sale license). No public input was voiced and the hearing was closed. Moved-Seconded (Johnson-Rosenau) to approve the following applications to transfer a license to sell intoxicating liquor (retail and Sunday on-sale license). Motion Carried. Retail and Sunday On-Sale Liquor License Previous License: Boulder Canyon Country Club, Golf Course Tract 1 Section 14, T5N, R4E of the Black Hills Meridian Transfer to: Boulder Canyon Country Club, Golf Course Tract 1 Section 14, T5N, R4E of the BHM, Apple Springs S/D Back Nine Tract 1, 2, 3 and 4.

**HIGHWAY:**

**PERMIT:**

**MONTANA-DAKOTA UTILITIES CO.:** Moved-Seconded (Johnson-Sleep) to follow the recommendation of Allan Bonnema, Highway Superintendent, and approve the permit to occupy County highway right-of-way for Montana-Dakota Utilities Co. located in Section 29 T5N, R3E along the Cutting Mine Road. Motion Carried.

**WEIGHT LIMITS/FISHER INDUSTRIES:** Allan Bonnema, Highway Superintendent, opined that the weight limits should be removed from the Wyoming border on the Old Highway 14 service road to Exit 2, as the trucks are not damaging the road or the bridge.

Commissioner Deibert stated his concern with the heavy truck traffic shortening the life of the asphalt and bridge. Deibert continued that when the highway was constructed it had high-grade asphalt applied, and, if and when, the road needs to be replaced, the County is not in the position to replace the asphalt with the same high-grade asphalt.

Jason Hanson, Broz Engineering, explained that the bridge is scheduled for inspection in mid-July. Hanson stated that at this time the bridge does not have a posted weight limit. He continued, adding that a report will be presented to the Commission once the inspection is complete sometime in September. He noted that during the last inspection the substructure and superstructure rated at a 7 and the deck rated at a 5 according to the National Bridge Inspection System and if the bridge falls below a rating of 4 a weight limit will be posted.

Commissioner Sleep stated he does not feel the road should have posted weight limits.

Moved-Seconded (Deibert-Rosenau) to maintain the status quo regarding weight limits from McNenney Road West to Exit 2 on 14A Service Road, until the Bridge inspection is complete. Aye-Johnson, Deibert, Rosenau and Flanagan. Nay-Sleep. Motion Carried.

**PROJECT UPDATES:** Allan Bonnema, Highway Superintendent, gave an update on the KOA Bridge on W Highway 14, Whitewood Valley Bridge, Chip Seal Project, Paving project, Doresett Road Bridge.

**CITY/COUNTY REC PATH EASEMENT AGREEMENT:** Kyle Mathis, City of Spearfish Engineer, and Tonya Vig, Floodplain Administrator/Engineering Technician were present to discuss the City/County Rec Path easement agreement and get input from the Commission. The easement agreement will be presented to the Commission for final approval on June 23, 2020 and presented to the Spearfish City Council for final approval on July 6, 2020.

**HIGGINS GULCH ROAD/ROGER RILEY:** Roger Riley, developer, presented a proposal for the maintenance of the second mile of Higgins Gulch Road.

The Board acknowledged receipt of emails and telephone calls from Steven Lust, Scott Hoffman, Robert Deis and Bob Baxter opposing Roger Riley's proposal.

Riley stated that his intention was to try to come up with a solution for road maintenance. Riley stated his proposal was for the County to do the snow removal and the landowners would do the mag water.

Commissioner Flanagan asked Riley if he remembered agreeing to take care of the road maintenance cost as part of the County approval to develop the area, charging each lot \$3,000? Riley stated that he did not own the land at that time.

Commissioner Deibert stated that typically the County does not enter into an agreement with private owners for maintenance, only government to government such as a with road district or township. Bruce Outka, Deputy State's Attorney, stated that he is not aware of any such agreements in the past. Alan Bonnema, Highway Superintendent, stated that the only agreement he has with private owners is for mag water application. Bonnema added that if the Commissioners are in favor, the County could absorb the cost of the first mile for mag water application in light of the \$3,000/lot collected for each subdivided lot on mile two. Commissioner Deibert stated he supports applying mag water to County roads and not billing the landowner.

Commissioner Deibert recommended that the landowners either form a road district or follow the process to request that the portion of the road be added to the county highway system.

Commissioner Flanagan stated that a timeline was presented dating back to 1950 laying out the history of the road. Flanagan stated in short, the US Forest Service had the County get them an easement and then hired the County to build the second mile of road for logging purposes and access to State lands.

Following up on Commissioner Flanagan's comment regarding the historical information, Commissioner Deibert stated that this information should be given to the press instead of the one sided information presented slamming this Board

Bonnema stated that the bridge located in the first mile is owned and maintained by the US Forest Service.

Riley questioned who would be responsible for the road if someone was injured. Commissioner Deibert stated that if a road district was formed, liability insurance could be obtained for that purpose.

Commissioner Sleep stated that according to the covenants recorded, it is the responsibility of the association along with the US Forest Service to maintain the road. Commissioner Deibert added that the road maintenance is spelled out in the covenants and has not been changed.

Rick Kruthoff, 20097 Higgins Gulch Road, mentioned that Roger Riley has no ownership in the first two-tenths or one-fourth of a mile or one-fourth of a mile a third of the way up. Kruthoff stated that everything else is sold, leaving three fourths of a mile unresolved.

Riley stated that if one is planning a subdivision covenants are put in place so the buyers understand they will have to share in the cost. Commissioner Flanagan stated he did not agree with that statement and the best thing would be for the people to take care of the road themselves.

Jared Lukens-Black, 10551 Higgins Gulch Road, thanked the Commission for rejecting the proposal and thanked the Sheriff's Office for the extra patrol.

**PLANNING & ZONING:**

**PLAT:**

**PRELIMINARY AND FINAL PLAT/SCHENK:** APPLICANT: Nancy & Karl Schenk LEGAL DESCRIPTION: Plat of Lot 4 of HES 417, Section 2, T3N, R4E (legal shortened) VICINITY LOCATION: Nemo Road SUMMARY: Creating a new Lot ZONING: PF ACREAGE: Lot 4 (10.63 acres).

Moved-Seconded (Deibert-Rosenau) to approve the preliminary plat for Nancy & Karl Schenk based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Plat of Lot 4 of HES 417, Section 2, T3N, R4E (legal shortened) VICINITY LOCATION: Nemo Road SUMMARY: Creating a new Lot ZONING: PF ACREAGE: Lot 4 (10.63 acres). Motion Carried.

Moved-Seconded (Rosenau-Johnson) to approve the final plat for Nancy & Karl Schenk contingent upon the fire plan being complete and based upon the Planning and Zoning Commission recommendation for approval and the concurrent recommendation of P&Z staff, as reflected in the staff report. LEGAL DESCRIPTION: Plat of Lot 4 of HES 417, Section 2, T3N, R4E (legal shortened) VICINITY LOCATION: Nemo Road SUMMARY: Creating a new Lot ZONING: PF ACREAGE: Lot 4 (10.63 acres). Motion Carried.

**COMPREHENSIVE PLAN UPDATE:** Amber Vogt, Planning & Zoning Administrator, gave an update on the Comprehensive Plan.

**COUNTY LIEN:** Bruce Outka, Deputy States Attorney, presented a request from AM to forgive some, or part, of a County lien. Outka noted that AM made a request for additional assistance while presently owing an amount for past assistance. Outka explained that an account balance is normally a disqualifier for additional assistance. Moved-Seconded (Deibert-Rosenau) that due to the COVID-19 pandemic, to allow AM to apply for additional assistance and waive the account balance disqualifier, and that additional assistance could be offered as long as AM met the other qualifications. Motion Carried.

9:50 a.m. Commissioner Deibert left the meeting.

**PETITION FOR IMPROVEMENT OF SECTION LINE AND AGREEMENT FOR IMPROVEMENT OF SECTION LINE HIGHWAY:**

APPLICANT: Black Hills Forest Acres, LLC LEGAL: Commencing at the point on the south boundary of Aspen Way which is the northeast corner of Lot 1 Block 1 of Whitewood Forest Addition as shown on the plat of record Plat Document 78-4400 and is common to the northwest corner of Tract A of the SW1/4NW1/4 of Section 21 as shown on the plat of record Plat Document 81-3166, which is the TRUE POINT OF BEGINNING; thence along the center line of the section line right-of-way, being 33 feet each side

of the section line between Sections 20 and 21 and along the lot line common to said Lot 1 Block 1 and said Tract A S 00.02'18"W a distance of 188.84 feet to the southeast corner of said Lot 1 Block 1; thence continuing along said section line and said Tract A S 00.01'18"W a distance of 100.00 feet to the Point of ending.

The Board acknowledged receipt of an email from Thomas Brady, attorney for Whitewood Forest Acres Road District and Homeowners' Association, stated that the petition to open and improve a section line has significant implications to the neighborhood. Fred Bourne, 11999 Aspen Way, submitted an email in opposition to the Black Hills Forest Acres, LLC petition for improvement of section line.

Roger Tellinghuisen, Attorney for Black Hills Forest Acres, stated that a petition was submitted for authorization to improve a short stretch of section line to provide access to property owned by Black Hills Forest Acres which currently does not have access. Tellinghuisen stated that the length of the improvement is 288.4' and will extend from Oak Drive for a distance until it crosses into Black Hills Forest Acres property. Tellinghuisen added that Black Hills Forest Acres has tried to work out an agreement with the owner of Tract A for permission to use the trail to the right of the section line, but no agreement can be reached. Tellinghuisen stated the granting of this petition will address the otherwise isolated tract nature of the property to which this stretch of section line highway will provide access. Tellinghuisen stated that there is a provision in the law that allows for a property owner who owns 10 or more acres that is not touched by a passible road to petition the County to come in and condemn an easement to that property. Tellinghuisen added the last sentence of the statute says, "that if a tract of land adjoining a section line right-of-way for at least 66' is not an isolated tract if a passable road can be built within the adjoining section line to connect to a passable public highway." Tellinghuisen stated that his client cannot claim that this is an isolated tract but the property owner does not have access to his property either. Tellinghuisen stated that an agreement is attached that states prior to any improvement of the section line highway it shall either be annexed into an existing road district or a new one will be formed.

Bruce Outka, Deputy State's Attorney, inquired whether access might exist as an easement by implication, necessity or some other easement theory, and whether any such theory had been explored? Tellinghuisen stated that it has not been explored due to the fact that a law suit will need to be filed.

Tom Brady, attorney for Whitewood Forest Acres Road District, stated that it is important to put the circumstances into proper perspective. He offered that when the settlement agreement was done, it was the parties' responsibility to preserve access and not to push the problem onto the neighbors or others who were not parties to that separation agreement. Brady stated that when the road district was formed in 2003, Black Hills Forest Acres had no intention of using that section line due to the fact that they owned the land all around the section line.

Brady stated that the road district has jurisdiction of the roads, and part of the section line is located in the road district and he was not sure whether the County retains jurisdiction to open up the 33' along Lot 1. Outka stated that there is a statute prohibiting the County from giving up jurisdiction to a road district. Brady followed up noting SDCL 31-12A-5.2 which provides: "That no political subdivision of the state may relinquish or transfer jurisdiction over any public highway to a road district." Brady further explained that this section line would not connect to any public highway and is located in the middle of nowhere, so to speak, and would connect to the road district public road system.

Brady highlighted SDCL 11-3-12-1 which provides: "The owner of any parcel of land proposing to develop such land for residential or commercial purposes shall obtain written approval of the proposed access to an abutting highway or street from the appropriate highway or street authority. The approval shall be obtained prior to filing of the plat in accordance with this chapter and may not replace the need for any permits required by law." Brady stated approval would need to be obtained from Whitewood Forest Acres Road District to build this street.

Brady questioned as to whether the improvement could be done due to grade even if the County did allow the improvement.

Fred Bourne, 11999 Aspen Way, stated that he is the one who will be significantly damaged by this proposed improvement. Bourne stated he purchased this lot in 2006 and there was never any intention of the section line being used. Bourne stated that, if the section line is improved, the

result would be a road within 20' of his house. Bourne asked the Commission, before making a decision, to please come out and do an onsite.

David Lust, Attorney for Fred Bourne, stated that the reason the applicant is between a rock and a hard place is of their own doing, and is placing Lawrence County in the position to be the heavy at the expense of citizens of Lawrence County. Lust added that the easement theory brought up by Outka is spot on and are all avenues available to use. Lust ended noting that a road plan should have been done when the property was under joint ownership. Lust reiterated everything Tom Brady and Fred Bourne said and asked that the Commission deny the petition.

Tellinghuisen added that in reference to the road next to Bourne's property, the applicant is asking to build the road to County specifications and the location would be intentionally placed in the easternmost 33' of the section line.

The Commission will do an on-site Tuesday, June 16, 2020 at 9:00 a.m.

10:25 a.m. Commissioner Deibert returned to the meeting.

**ITEMS FROM COMMISSIONERS:**

**DISCRETIONARY FORMULA:** Bruce Outka, Deputy State's Attorney, stated that information was provided in reference to the new discretionary formula statute that will take effective July 1, 2020.

**ARTESIAN WELL GIFT:** Bob Ewing, 3226 W Fairground Loop, stated that the documents to sign the artesian well over to the County have been prepared when the County is ready to take ownership.

**NEMO:** Commissioner Deibert stated that a meeting is scheduled for Thursday, June 11, 2020 in Nemo

**BILLS:** Moved-Seconded (Rosenau-Deibert) to approve payment of the following payroll and vouchers listed below for expenditures for insurance, professional services, publications, rentals, supplies, repairs, maintenance, travel, conference fees, utilities, furniture and equipment drawn on the proper funds and various departments. Motion Carried.

**Payroll:** Comm-\$7,033.31; Aud-\$11,524.50; Treas-\$13,677.63; States Atty-\$13,878.60; Pub Def-\$13,237.64; Gen Govt Bldg-\$9,672.16; Equal-\$15,733.24; Rod-\$7,618.77; Vso-\$1,736.20; Ist-\$9,659.05; Sher-\$50,564.52; Jail-\$28,225.99; Coroner-\$862.36; 24/7-\$359.62; Emerg Mgnt-\$4,650.41; E911-\$14,87.70; Highway-\$44,436.63; Weed-\$8,268.16; P&Z-\$6,275.58; **Bills:** Abell, Mary-\$5.96; A To Z Shredding-\$52.02; A&B Business,Inc Solutions-\$1,977.97; A&B Welding Supply-\$114.21; A&J Supply-\$27.98; Ace Hardware Of Lead-\$61.97; American Family Life-\$2,619.88; Black Hills Energy-\$10,130.97; Breit & Boomsma-\$100.00; Credit Collections Bureau-\$212.16; Deadwood Recreation Center-\$345.00; Delta Dental Of South Dakota-\$7,992.30; Dept Of The Treasury-\$60,874.70; Northern Hills Rec Center-\$174.00; Office Of Child Support-\$632.31; Sd Retirement System-\$63,493.34; Sdrs Supplemental Retirement-\$1,937.50; Wellmark Blue Cross-\$94,842.52; Air Connection-\$1,079.66; At&T Mobility-\$1,015.84; BH Pest Control-\$190.00; BH Pioneer-\$1,030.61; BH Windshield Repair-\$50.00; Barcodes-\$198.13; Barrett, Marlene-\$275.00; Benning, Elizabeth-\$270.00; Black Hills Energy-\$132.42; Black Hills Pure-\$31.00; Black Hills Urgent Care-\$130.14; Bob Barker Company-\$35.77; Bomgaars Supply-\$1.78; Brandt, Karen-\$295.00; Brosz Engineering-\$16,152.50; Butler Machinery Co-\$635.48; Butte Electric Coop-\$429.05; Calabro, Patricia-\$270.00; Cbh Cooperative-\$4,886.60; Center For Education-\$124.95; Century Business Products-\$417.74; Cochran, Leslie-\$27.20; Dakota Equipment Rental-\$1,688.29; Dale's Tire & Retread-\$8,160.00; Deadwood, City Of-\$1,017.13; Diamond Pharmacy-\$110.25; Dmc Wear Parts-\$6,700.00; Election Sys & Software-\$8,858.11; Ertz, Dewey J, Ed-\$3,525.00; Et Sports-\$408.80; Floyd's Truck Center-\$194.13; G&H Distributing Of Rc-\$54.35; Galls-\$380.44; Godfrey's Brake Serv-\$22.00; Gross, Ellen-\$270.00; Hartford-Priority Accounts-\$2,207.87; Heartland Paper Co-\$859.10; Hilpert & Hale Prof-\$1,783.83; Hood, Kathleen-\$270.00; Jacobs Precision Welding-\$308.88; Johner Gravel-\$4,751.93; Jorgensen, Kay-\$295.00; Juneks' Chrysler/Dodge-\$34.16; Karen Paige Hunt-\$95.00; Kegler, David-\$270.00; Kegler, Heidi-\$270.00; Kinghorn, Sheila-\$250.00; Kinkade Funeral Chapel-\$1,170.00; Kosel, Joseph-\$1,415.26; Lawson Products-\$202.53; Lead, City Of-\$102.49; Lead-Deadwood Sanitary-\$559.49; Manlove Brain & Body Health-\$2,587.50; Manufacturing Solutions-\$2,494.00; McClure, Susan-\$300.00; Mcleod's Office Supply-\$26.62; Mcguire Jones, Tera-\$270.00; Miles, Sara-\$250.00; Montana Dakota Utilities-

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\$1,866.33; Monument Health Network-\$350.24; Myers, Carol-\$250.00; Nalco Company-\$1,164.00; Nelson, Tonya-\$2,340.00; North Central Int'l-\$9.90; Renaissance Roofing-\$2,500.00; Northern Truck Equip-\$600.00; Nutrien Ag Solutions-\$6,370.40; Ogs Technologies-\$315.30; Pearson, Jacqueline Kay-\$250.00; Phoenix Investigations-\$1,313.01; Pisani, Susan-\$270.00; Pitney Bowes Global Financial-\$226.80; Postmaster, Deadwood-\$392.00; Quik Signs-\$643.15; Quill-\$44.90; Redwood Toxicology Lab-\$99.00; Root Spring Scraper-\$407.19; Sacrison Asphalt-\$6,888.00; Schroeder, Krista-\$270.00; Schmunk, Lee-\$270.00; Scovel Psychological-\$3,280.00; Sd Dept Of Transportation-\$535.38; Sd State Treasurer-\$1,098.24; Servall Towel & Linen-\$691.03; Simon North Region-\$9,277.53; Simonyak, Gail-\$250.00; Spearfish Auto Supply-\$559.65; Sturdevant's Auto Parts-\$1,736.09; Sysco Montana-\$1,749.06; Thomson Reuters-West-\$203.56; Transource Truck & Equip-\$420.25; Twin City Hardware & Lumber-\$555.65; Waste Connections-\$917.28; Watertree-\$46.50; Wex Bank-\$465.18; White's Canyon Motors-\$1,007.52; Roth, Lois-\$100.00; **Witness & Jurors:** \$1,021.84.

**ADJOURN:** 10:51 a.m. There being no further business it was Moved-Seconded (Deibert-Flanagan) to adjourn the meeting. Motion Carried.

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Date Approved

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Brandon Flanagan, Chairperson

ATTEST:

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Brenda McGruder, Auditor