

LAWRENCE COUNTY COMMISSIONERS MEETING – November 22, 2022 page-1

Vice-Chairman Robert Ewing called the regular meeting of the Lawrence County Commissioners to order and the Pledge of Allegiance was conducted at 8:00 a.m. on November 22, 2022 in the Administrative Annex Building of the Lawrence County Courthouse located at 90 Sherman Street, Deadwood, SD with Commissioner Randy Deibert, Brandon Flanagan and Richard Sleep. Absent-Commissioner Randall Rosenau.

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

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

DECLARE CONFLICTS: No Conflicts were declared by the Lawrence County Commission.

MINUTES: Moved-Seconded (Flanagan-Sleep) to approve the minutes of November 1, 2022 County Commission meeting. Motion Carried.

Moved-Seconded (Flanagan-Sleep) to approve the minutes of November 10, 2022 County Commission meeting. Motion Carried.

TRAVEL REQUEST:

PUBLIC DEFENDER: Moved-Seconded (Flanagan-Ewing) to approve the travel request for Amber L. Richey to attend the National Association of Criminal Defense Lawyers 2023 Midwinter meeting and seminar in New Orleans, LA from February 28, 2023-March 5, 2023. Aye-Flanagan, Sleep and Ewing. Nay-Deibert. Motion Carried.

PERSONNEL:

SHERIFF: Moved-Seconded (Deibert-Ewing) to approve the step raise for Nathaniel Eriksen as a full-time permanent Correctional Sergeant G2 at a base rate of \$23.48 an hour, effective December 4, 2022. Motion Carried.

Moved-Seconded (Deibert-Ewing) to approve the step raise for Robert Goode as a full-time permanent Correctional II G2 at a base rate of \$21.90 an hour, effective December 4, 2022. Motion Carried.

Moved-Seconded (Deibert-Ewing) to approve the step raise for Rich Walk as a full-time permanent Sergeant G3 at a base rate of \$30.60 an hour, effective November 20, 2022. Motion Carried.

MENTAL ILLNESS BOARD: Moved-Seconded (Flanagan-Sleep) to approve the Mental Illness Board fee at \$101.00/per case effective November 7, 2022 for Hon. Francy E. Foral, Hon. Chad R. Callahan, Timothy R. Johns, Eric John Nies and Timothy J. Barnaud. Motion Carried.

MATHIS HOMEOWNERS' ROAD DISTRICT: The Board acknowledged receipt of the proposed Mathis Homeowners' Road District petitions. Public examination of survey, map and petition will be posted according to SDCL 31-12A-4.

Commissioner Deibert disclosed that he lives in the proposed Mathis Homeowners' Road District.

INVASIVE SPECIES MANAGEMENT: Dave Heck, Invasive Species Manager, reported that the vehicle budgeted for in 2022 was not available. Brenda McGruder, Auditor, stated that the money not spent in 2022 can be supplemented into next year's budget to cover the cost of the vehicle.

SHERIFF:

SHERIFF'S REPORT: Brian Dean, Sheriff, reported on the current jail population

PUBLIC SAFETY & SERVICES CENTER PROJECT UPDATE: Brian Dean, Sheriff, gave an update on the Public Safety & Services Center.

HIGHWAY:

2023 PAVING PROJECT/NEMO ROAD: Moved-Seconded (Flanagan-Deibert) to advertise and set a bid opening for December 13, 2022 at 8:30 a.m. for the 2023 paving project on Nemo Road. Motion Carried.

PERMITS:

BLACK HILLS POWER: Moved-Seconded (Flanagan-Ewing) to follow the recommendation of Allan Bonnema, Highway Superintendent, and approve the utility permit for Black Hills Energy to open trench over 123rd Ave approximately 10 miles from Whitewood for construction of a underground primary power beginning in Section 13NW, T7N, R4E and ending in Section 14NE, T7N, R4E. Substitute motion provided.

Commissioner Deibert introduced a substitute motion. Moved-Seconded (Deibert-Sleep) to approve the utility permit for Black Hills Energy to open trench over 123rd Ave approximately 10 miles from Whitewood for construction of a underground primary power beginning in Section 13NW, T7N, R4E and ending in Section 14NE, T7N, R4E with the condition that a two year warranty be placed on the trench. Motion Carried.

DRAFT RESOLUTION/CITY OF SPEARFISH: Allan Bonnema, Highway Superintendent, presented a draft resolution to accept or transfer dedication and responsibility for maintenance of certain roads. Roads included in the resolution include Hillsview Road approximately .677 Miles, Hill Street approximately .153 Miles, Saint Onge Road approximately .922 Miles, Industrial Drive approximately .727 miles and 27th Street approximately .83 miles.

Bonnema reported that the City of Spearfish would like to transfer Industrial Drive approximately .727 miles and 27th Street approximately .83 miles to the County. Bonnema gave an overview of the improvements that need to be done to bring them to County standards. Bonnema stated that once these roads are transferred, the County would not have not bargaining tools with the City of Spearfish.

Commissioner Deibert stated that the County should not take over roads that are within the City Limits. Deibert commented that a maintenance agreement could be worked out for those areas that are located in the City limits.

Commissioner Sleep voiced his concerns that both parties understand that all roads that are included in the proposed resolution will be transferred in as-is condition.

Commissioner Flanagan noted that he had no problem with the County assuming responsibility of 27th Street presently, but that this road should be included in future discussions with City to revert back to the City as it is in City limits. He also noted that any expenses borne by the County to improve 27th Street should be tracked and used to offset any amounts that the City may assert need to be spent by the County on Christensen Drive or Maitland Road in order for the City to assume jurisdiction.

The Commission requested that the portion of Saint Onge Road included in the resolution be extended by approximately .25 mile to the North to reach the City limit boundary. Staff were directed to pass this request on to City staff for consideration for inclusion in the final resolution version.

Moved-Seconded (Flanagan-Deibert) to allow the discretion of staff to set a public hearing for the resolution to accept or transfer dedication and responsibility for maintenance of certain roads. Motion Carried.

PROJECT UPDATES: Allan Bonnema, Highway Superintendent, reported that the surplus posts have been taken to the recycling center and the road signs will be stored until the County surplus sale in 2023.

Allan Bonnema, Highway Superintendent, reported that the county road striping project will not be completed this year.

BH DEVELOPMENT, LLC./POWDER HOUSE PASS COMMUNITY IMPROVEMENT DISTRICT PETITION TO ANNEX TERRITORY: Bruce Outka, Deputy State's Attorney, reported that this is a time and place for a public hearing for the Powder House Pass Community Improvement district petition to annex territory pursuant to SDCL 7-25A-42, et. seq.

No public input was voiced and the public hearing was closed.

John Frederickson, Attorney for BH Development, presented the annexation pursuant to SDCL

7-25A-41 of a thirty-three (33) acre parcel of property owned entirely by BH Development, LLC. into Powder House Pass Community Improvement district.

Commissioner Deibert commented on Exhibit A1, noting that the exceptions for the H-lot and the Reunion Lode in the Warranty Deed, see Doc. #2019-04560, are not listed on the Exhibit F - Record of Survey along with some missing dimensions on Exhibit F. Deibert also commented that the seal from Dave G. Bressler, PE is missing from the environmental site assessment.

Moved-Seconded (Flanagan-Deibert) to approve and authorize the Vice-Chairman to sign the findings of fact and conclusions of law granting the petition for annexation of thirty-three (33) acres into Powder House Pass Community Improvement district subject to conforming documents being amended. Aye-Flanagan, Deibert and Ewing. Nay-Sleep. Motion Carried.

Moved-Seconded (Flanagan-Deibert) to approve and authorize the Vice-Chairman to sign the order granting the petition for annexation of thirty-three (33) acres into Powder House Pass Community Improvement district subject to conforming documents being amended. Aye-Flanagan, Deibert and Ewing. Nay-Sleep. Motion Carried. STATE OF SOUTH DAKOTA COUNTY OF LAWRENCE BH DEVELOPMENT, LLC, Petitioner. BEFORE THE COUNTY COMMISSION OF LAWRENCE COUNTY ORDER GRANTING THE PETITION FOR ANNEXATION OF THIRTY-THREE (33) ACRES INTO POWDER HOUSE PASS COMMUNITY IMPROVEMENT DISTRICT Based upon the Findings of Fact and Conclusions of Law entered contemporaneously herewith, and a public hearing having been held on November 22, 2022, at 9:00 a.m. MST, in the Commission Room of the Lawrence County Commission, wherein all interested persons could appear and present testimony, and the Lawrence County Commission being otherwise fully advised in the premises, with lawful jurisdiction over the Petition to Annex Property into Powder House Pass Community Improvement District filed by BH Development, LLC, now therefore, the Lawrence County Commission does hereby enter its Order as follows: IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition to Annex Property into Powder House Pass Community Improvement District filed by BH Development, LLC is hereby granted and the proposed area can and should be annexed into the existing Powder House Pass Community Improvement District; and it further ORDERED ADJUDGED AND DECREED that a certified copy of this Order granting the Petition for Annexation to the Powder House Pass Community Improvement District, to include the property described within the Petition, as follows: The Reunion M.S. 1321, Eclipse M.S. 1499 and Anna M.S. 1445 located in Section 7 and Section 8, T4N, R3E, BHM in Lawrence County, South Dakota, shall be filed with the Auditor and Register of Deeds for Lawrence County. Dated this 22nd day of November, 2022. LAWRENCE COUNTY COMMISSION Bob Ewing, Vice-Chairman ATTEST: Brenda McGruder Lawrence County Auditor.

PETITION FOR VACATION OF SECTION LINE/HIGHWAY/RIGHT-OF-WAY/ KING:

A Public Hearing was held on a Petition for Vacation of Section Line Right-of-Way LEGAL DESCRIPTION FOR THE VACATION: Alley Vacation Between Block 8 and Block 6, Galena, Being A Portion Of Sheehan Placer No. 557, Located In Sections 4 and 9, T4N, R4E, B.H.M., Lawrence County, South Dakota. Affecting the Landowners: King, Greg O. & Debra K.

Bruce Outka, Deputy State's Attorney, presented Lawrence County Resolution #2022-30, A Resolution & Order to Vacate a Portion of a Highway, Part of Which Is Located On a Section Line/Highway/Right of Way.

Greg King, landowner, stated that it was his understanding that since Galena was never incorporated as a city the alley ways do not exist but were originally platted and as part of their title insurance they are being asked to vacate the alley to clean things up.

No public input was voiced and the public hearing was closed.

Moved-Seconded (Deibert-Ewing) to approve, adopt, and authorize the Vice-Chairman to sign Lawrence County Resolution #2022-30, Resolution & Order to Vacate a Portion of a Highway, Part of Which Is Located On a Section Line/Highway/Right of Way. Abstain-Flanagan. Motion Carried. LAWRENCE COUNTY RESOLUTION #2022-30 RESOLUTION & ORDER TO VACATE A PORTION OF A HIGHWAY, PART OF WHICH IS LOCATED ON A SECTION LINE/HIGHWAY/RIGHT OF WAY WHEREAS, a petition was presented to the Board of County Commissioners of Lawrence County, South Dakota, signed by all adjacent landowners as there are fewer than three, requesting that a portion of a highway, part of which is located on a section

line/highway/right of way be vacated, WHEREAS, the Board of County Commissioners set a date for hearing and evidence having been presented to the Board of County Commissioners that notice has been given of the time, place and purpose of said hearing by publication of notice in the B.H. Pioneer, Spearfish, South Dakota once each week for two consecutive weeks prior to the date of hearing, and WHEREAS, the Board of County Commissioners having acted as a committee of the whole concerning said vacation, and WHEREAS, said section line does not constitute a portion of a South Dakota State Trunk Highway System nor the Lawrence County Highway System, and WHEREAS, the public interest will be better served by the proposed section line vacation, now therefore, BE IT RESOLVED by the Lawrence County Board of Commissioners as follows: That the described portion of a highway, part of which is located on a section line/highway/right of way be vacated: LEGAL DESCRIPTION FOR THE VACATION: ALLEY VACATION BETWEEN BLOCK 8 AND BLOCK 6, GALENA, BEING A PORTION OF SHEEHAN PLACER NO. 557, LOCATED IN SECTIONS 4 AND 9, T4N, R4E, B.H.M., LAWRENCE COUNTY, SOUTH DAKOTA AFFECTING THE LANDOWNERS: KING, GREG O & DEBRA K Dated this 22nd day of November, 2022 Robert Ewing, Vice-Chairman Lawrence County Commission ATTEST: Brenda McGruder, Lawrence County Auditor I, Brenda McGruder, the duly appointed Auditor of Lawrence County, South Dakota, do hereby certify that the within and foregoing resolution was passed by the Lawrence County Board of County Commissioners at a regular session held November 22nd, 2022. Dated at Deadwood, South Dakota, the 22nd day of November, 2022. Brenda McGruder, Lawrence County Auditor.

DAKOTA GOLD CORPORATION/GERALD ABERLE, COO, DIRECTOR: Gerald Aberle, COO, Director was present to give a company overview of the Dakota Gold Corporation.

PLANNING & ZONING:

AGREEMENT FOR PROFESSIONAL SERVICES W/LOOKOUT PLAN + CODE CONSULTING, LLC: Bruce Outka, Deputy State's Attorney, presented an agreement for professional services with Lookout Plan + Code Consulting LLC./Tom Paisley, member.

Discussion was held on item #6 of the agreement regarding the insurance verbiage.

Moved-Seconded (Flanagan-Deibert) to authorize the Vice-Chairman to sign, with the amendment to the insurance verbiage, the agreement for professional services with Lookout Plan + Code Consulting LLC./Tom Paisley. Motion Carried.

BUILDING INSPECTIONS IN JANUARY AND FEBRUARY 2023 (JEFF SCHROEDER, DEPUTY CODE ENFORCEMENT OFFICER): Jeff Schroeder, Deputy Code Enforcement Officer, reported that he would be having knee surgery on January 19, 2023. Schroeder requested guidance on how to handle the building inspections during his absents. Schroeder reported that some of the inspection could be done virtually and also Tom Paisley stated he would be willing to contract with Lawrence County to perform framing and final inspections.

Moved-Seconded (Flanagan-Deibert) to allow staff discretion for virtual inspections or contracting with Tom Paisley to perform the inspections. Motion Carried.

KLOSS DEVELOPMENT LETTER OF CREDIT/ MEMORANDUM OF AGREEMENT: Janette Sprenger, Planning & Zoning Assistant Tech, presented her staff report.

Kayla Kloss, applicant, reported that the wildfire prevention/fuels reduction services from Altergott Forestry, LLC. is about 50% complete.

Moved-Seconded (Flanagan-Deibert) to accept the Bradley J Kloss Irrevocable Letter of Credit #6000252673. The term of the bond expires December 31, 2023. Motion Carried.

Moved-Seconded (Flanagan-Deibert) to approve and authorize the Vice-Chairman to sign the Memorandum of Agreement between Lawrence County and Kloss Development, LLC. as the developer is seeking County approval of the final plat so the Developer might sell lots within the Dakota Highlands Estates Located in the E ½ Section 23, T4N, R4E. Motion Carried.

FINAL PLAT/KLOSS DEVELOPMENT: APPLICANT: Kloss Development LEGAL DESCRIPTION: Lots 1-9 and 31-42 of Dakota Highlands Estates located in the E ½, Section 23, T6N, R4E VICINITY LOCATION: Whitewood SUMMARY: First final of the subdivision ZONING: PF.

The Board acknowledged an email from Connie Snow voicing her concerns with the water table.

Moved-Seconded (Flanagan-Deibert) to release the final plat for filing for APPLICANTS: Kloss Development 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: Lots 1-9 and 31-42 of Dakota Highlands Estates located in the E ½, Section 23, T6N, R4E VICINITY LOCATION: Whitewood SUMMARY: First final of the subdivision ZONING: PF. Motion Carried.

PLATS:

CONSIDERATION OF AS-BUILT ROAD DRAWINGS/CANYON, LLC.: APPLICANT:

Canyon, LLC LEGAL DESCRIPTION: Lots 1-8 of Rimrock Canyon Subdivision, being a sub of the NE ¼ NE ¼ of Section 35, T3N, R1E VICINITY LOCATION: Hwy 85/Boles Canyon Rodd SUMMARY: New subdivision/1st Final ZONING: PF.

John Frederickson, Attorney for Canyon, LLC. was present and explained that the applicant is requesting to withdraw the preliminary and final plats from consideration but presented the as-built road drawings for the roads.

The Board acknowledged the as-built road drawings and requested that the Highway Superintendent do an on-site and report back to the board.

STATES ATTORNEY:

EXECUTIVE SESSION PERSONNEL: 10:18 a.m. Moved-Seconded (Deibert-Flanagan) to go into executive session pursuant to SDCL 1-25-2(1) and/or SDCL 1-25-2(3) to discuss personnel and/or consult with legal counsel. Motion Carried. 10:39 a.m. The Board opened for regular business with no action taken.

Moved-Seconded (Flanagan-Deibert) to allow John Fitzgerald, State's Attorney, to advertise for a Deputy State's Attorney. Motion Carried.

ITEMS FROM THE PUBLIC: None.

ITEMS FROM COMMISSIONERS:

The Board acknowledged an email from the Homestake Opera House in reference to the Lead forward community pledge drive meeting to be held on Tuesday, December 13, 2022 at the Opera House 313 W. Main Street, Lead SD.

Commissioner Deibert reported that the next Black Hills Association of County Commissioner/Officials meeting will be held December 2, 2022 at the Crazy Horse Memorial Café. Round table will start at 11:30 a.m.

BILLS: Moved-Seconded (Deibert-Flanagan) 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-\$7,474.80; Elect-\$1,283.93; Aud-\$12,744.19; Treas-\$16,467.31; States Atty-\$19,135.16; Pub Def-\$13,742.67; Gen Govt Bldg-\$11,540.18; Equal-\$15,984.86; Rod-\$9,746.03; Vso-\$1,914.60; Ist-\$10,592.38; Sher-\$49,948.64; Jail-\$29,237.70; Coroner-\$2,516.26; 24/7-\$510.30; Emerg Mgnt-\$4,869.41; E911-\$16,885.80; Highway-\$49,313.08; Weed-\$4,425.49; P&Z-\$8,133.44; **Bills:** Dias, Gregory-\$5.88; A&I Distributors-\$166.80; A&J Supply-\$7.99; Apco International-\$935.00; Apsa/Airborne Public Safety-\$55.00; Audra Hill Consulting-\$125.63; BH Council Of Local Govt-\$25,000.00; BH Physical Therapy-\$50.00; BH Pioneer-\$252.00; Barnaud Law Firm Prof-\$303.20; Black Hills Chemical-\$807.51; Black Hills Energy-\$9,832.97; Black Hills Psychology-\$450.00; Black Hills Pure-\$11.50; Bluepeak-\$1,754.30; Bob Barker Company-\$160.99; Bruemmer, Lynnel-\$76.00; Butler Machinery Co-\$861.70; Centurylink-\$340.09; Chadams-\$135.00; City Of Rapid City-\$1,360.00; Civicplus-\$3,646.52; Cornelius, Kaylee-\$300.00; Credit Collections Bureau-\$467.40; Dakota Truck And Repair-\$4,140.23; Datec-\$13,035.00; Dept Of Hlth Lab Services-\$1,285.00; Dept Of The Treasury-\$66,670.47; Diamond Pharmacy-\$1,479.25; Galls-\$471.12; Gene's Lock Shop-\$38.96; \$175.00; High Plains Business Forms-\$1,784.20; Hilpert & Hale Prof-\$1,787.00; Jacobs Precision Welding-\$740.80; Juneau County Sheriff Office-\$75.00; Keeper Security-\$2,925.00; Kiesler's Police Supply-\$1,488.14;

Language Line Services-\$66.15; Lewis & Clark Bhs-\$184.00; Lynn's Dakotamart-\$32.97; Metric Motors-\$225.00; Montana Dakota Utilities-\$202.60; Monument Health Network-\$2,802.93; Monument Health Rc Hospital-\$461.00; Ms Mail-\$1,235.94; Nebraska Salt & Grain Co-\$12,383.16; Nelson Law-\$262.60; Nelson, David-\$175.00; Office Of Child Support-\$456.46; Olson Fuels-\$29,863.70; Pcsa Addiction Treatment Serv-\$1,582.00; Pete Lien & Sons-\$4,498.11; Priority Dispatch-\$365.00; Quill-\$415.49; Radiology Associates-\$131.62; Redwood Toxicology Lab-\$131.06; Sara J Fitzgerald-\$666.00; Sdrs Supplemental Retirement-\$3,557.50; Semerad, Sandra-\$44.20; Sikich-\$798.75; Spearfish Auto Supply-\$289.16; Spearfish Police Dept-\$10,928.20; Staples-\$277.66; State Bar Of South Dakota-\$1,495.00; State Disbursement Unit-\$599.47; Sterna, Laura-\$60.00; Sturdevant's Auto Parts-\$387.84; Sturgis Responder Supply-\$46.95; Sysco Montana-\$3,394.43; Thomson Reuters-West-\$531.60; Triple K Tire & Repair-\$3,166.66; Twin City Hardware & Lumber-\$147.89; Verizon Wireless-\$106.89; Yankton County-\$97.20; **Witness, Jurors & Election Workers:** \$11,477.43.

RECESS: 10:43 a.m. the board recessed until 12:28 p.m.

HIGHWAY SUPERINTENDENT AND DIRECTOR OF EQUALIZATION INTERVEIWS:
EXECUTIVE SESSION PERSONNEL: 12:30 p.m. Moved-Seconded (Sleep-Flanagan) to go into executive session pursuant to SDCL 1-25-2(1) to discuss personnel. Motion Carried. 3:53 p.m. The Board opened for regular business with no action taken.

Moved-Seconded (Deibert-Ewing) to appoint John Bey as Highway Superintendent effective January 1, 2023 at a base pay of \$88,833.16 annually/\$3,416.66 per pay period with a review being held in 6 month (June 1, 2023) with an anticipated 5% increase upon a satisfactory review. Motion Carried.

Moved-Seconded (Deibert-Flanagan) to re-advertise for the Director of Equalization position with a closing date of January 20, 2023. Motion Carried.

Moved-Seconded (Deibert-Sleep) to advertise for a new Appraiser position in the Equalization office with a closing date of February 10, 2023. Motion Carried.

ADJOURN: 3:58 p.m. There being no further business, Vice-Chairman Ewing adjourned the meeting. Motion Carried.

Date Approved

Randall Rosenau, Chairperson

ATTEST:

Brenda McGruder, Auditor