

**Custer County Commission Meeting (Wednesday, April 28, 2021)**

**Members present:**

Commissioners Jim Lintz, Mark Hartman, Mike Linde, Craig Hindle, Travis Bies and Commission Legal Counsel Susan Anderson.

**A. Commission Meeting was called to order at 8:00 AM followed by the Pledge of Allegiance.**

**B. Adopting of the agenda**

1. Motion by Linde and seconded by Bies to add Close out CARES Act Grant report under Airport and Airport Hangar Leases under Old Business and approve amended agenda; vote taken, all aye; motion carried.

**C. Consent Agenda**

1. Motion by Hartman and seconded by Hindle to approve the minutes of the April 14, 2021 Commission meeting, the following travel requests (amending DOE travel request amount to \$1,090) and the following vouchers; vote taken, all aye; motion carried.

Travel requests approved: Leah Vissia, Lindsey Luckett, Ron Remley, Tara Haswell and Angela Withrow to SDAAO Convention in Hot Springs, SD at a cost of \$1,090; Terri Cornelison, Dawn McLaughlin and Teri Morgan to SDAAO Spring Workshop in Pierre, SD at a cost of \$1,190.94

Vouchers approved as follows:

**PAYROLL:** Pay Period ending 4/20/2021; Commissioners \$6,434.09; Auditor \$6,334.41; Treasurer \$10,305.12; Info Systems & Tech \$2,850.53; States Attorney \$12,744.81; Courthouse Building \$6,608.38; Director of Equalization \$12,472.56; Register of Deeds \$4,574.85; Veterans Service \$1,399.58; Human Resources \$2,130.30; Sheriff \$37,242.09; Coroner \$322.95; Nurse \$747.41; Library \$10,205.11; Conservation \$454.91; Weed & Pest Control \$1,941.98; Planning \$7,574.39; County Road & Bridge \$34,628.56; Emergency Management \$2,775.72; 24/7 Sobriety \$1,433.11; 911/Communications \$13,494.55

**COMMISSIONERS:** Pitney Bowes \$2,015

**AUDITOR:** Active Data Systems \$1,200; SD Association of County Officials \$185

**TREASURER:** SD Association of County Officials \$185

**COURT APPOINTED ATTORNEY:** Beesley Law Office \$891.50; Angela Colbath \$4,085.40; Sword Law Office \$1,066.53

**COURTHOUSE BUILDING:** Adtech – Rapid Fire Protection \$224.49

**DIRECTOR OF EQUALIZATION:** SDAAO Treasurer \$1,000

**REGISTER OF DEEDS:** SD Association of County Officials \$185

**INFO TECHNOLOGY:** Golden West Technologies \$486.87

**SHERIFF:** Black Hills Electric Coop \$50.25; Fedex \$15.37; Pheasantland Industries \$54.85; Sonnel Technologies \$8,850

**PRISONER CARE:** City of Rapid City \$120; Correct RX Pharmacy \$8.97; Redwood Toxicology Laboratory Inc. \$255

**AIRPORT:** Amerigas \$293.85; Airport Lighting Company \$731.80

**SUPPORT OF POOR:** Chamberlain McColley's Funeral Home \$4,000

**CUSTER COUNTY HOUSING:** Custer County Housing \$5,000

**NURSE:** SD Department of Health \$2,724.50

**CUSTER SENIOR MEALS:** Custer Senior Meals \$1,000

**BLACK HILLS WORKSHOP:** Black Hills Workshop \$6,000

**PRAIRIE HILLS TRANSIT:** Prairie Hills Transit \$5,000

**CASA:** Seventh Circuit CASA \$2,400

**MENTALLY ILL:** Lewis & Clark BHS \$184; Dean Schaefer \$36

**MENTAL HEALTH CENTER:** New Trails Ministry \$300

**MENTAL ILLNESS BOARD:** Beesley Law Office \$150; Pennington County States Attorney \$215; Yankton County Treasurer \$134.90

**LIBRARY:** Century Link \$16.73

**CUSTER YMCA:** Custer YMCA \$7,100

**FAIR:** Custer County Fair Association \$8,000

**WEED & PEST:** Black Hills Electric Coop \$146.52

**COUNTY ROAD & BRIDGE:** Black Hills Electric Coop \$2,160.03; Butler Machinery \$1,906.62; Floyd's Truck Center \$6,216.24; French Creek Supply \$238.39; Godfrey Brake \$157.36; Inland Truck Parts \$28.48; Jenner Equipment \$550; Prairie Auto Parts \$27.99; Pheasantland Industries \$354.92; Servall Towel & Linen \$118.39; Town of Buffalo Gap \$61; Snap on Tools \$177.49; North Central International \$693.03; Stern \$37.25; Honnen Equipment Company \$49.69; L & A Welding \$30; Century Link \$16.73; Nelson's Oil & Gas \$938.60; MG Oil Company \$19,586.31

**FIRE PROTECTION:** City of Rapid City \$2,000

**25/7 SOBRIETY:** Pharmchem Inc. \$85.65

**BUILDING:** Black Hills Electric Coop \$762.03; Black Hills Energy \$1,100.47

**D. Conflict of Interest Declarations** – Commissioner Hartman declared a conflict of interest with the 8:30 a.m. Public Hearing and Item 1 under Planning.

**E. Highway**

1. Motion by Linde and seconded by Bies to approve the new hire of JW Olson as a Full-Time Permanent Equipment Operator II starting April 19, 2021 at a wage of \$20.93 per hour; vote taken, all aye; motion carried.
2. Motion by Hindle and seconded by Hartman to approve the new hire of Art Knodel as Temporary Part-Time Seasonal Mower at a wage of \$18 per hour with a starting date to be determined; vote taken, all aye; motion carried.

**F. Weed & Pest**

1. Motion by Hartman and seconded by Linde to approve the new hire of Gail Kay as Temporary Part-time Weed Sprayer/Equipment Operator starting May 17, 2021 at a wage of \$18 per hour; vote taken, all aye; motion carried.
2. Motion by Hindle and seconded by Linde to approve the new hire of Brienna Kringlie as Temporary Part-Time Weed Sprayer starting May 10, 2021 at a wage of \$18 per hour; vote taken, all aye; motion carried.

**G. Emergency Management**

1. The commission acknowledged the second reading of Custer County Ordinance No. 20.

## **CUSTER COUNTY ORDINANCE NO. 20**

### **AN ORDINANCE REGULATING OPEN BURNING IN CUSTER COUNTY**

**PURPOSE:** This ordinance addresses the area of Custer County that lies east of South Dakota Highway 79 outside of the Black Hills Forest Fire Protection District (BHFFPD). Within the BHFFPD, open burning is not allowed without a permit, pursuant to SDCL 34-35-15. The South Dakota Wildland Fire Division is the administrator of all permitting pursuant to SDCL 34-35-16 in the BHFFPD and all applicable laws within that district.

**WHEREAS,** the Commissioners of Custer County (the “Commission”) are charged with protecting the health, safety and general welfare of the citizens of Custer County, including all property situated therein; and

**WHEREAS**, SDCL 7-8-20(18) authorizes the Commission to prohibit or restrict open burning, after consultation with local fire officials and law enforcement officials, in order to protect the public health and safety; and

**WHEREAS**, the Commission previously enacted Custer County Ordinance No. 14 in 2007 to provide penalties for violation of burn bans and permits; and

**WHEREAS**, the Commission desires to repeal Custer County Ordinance No. 14 and replace the provisions of Ordinance No. 14 with this Ordinance No. 20; and

**WHEREAS**, the Emergency Management Services Director of Custer County has consulted with local fire officials and law enforcement officials concerning the need to regulate open burning under certain conditions that pose a threat of wildfire; and

**WHEREAS**, the Commission hereby deems it necessary to adopt the restrictions set forth in this Ordinance No. 20 in order to reduce the threat posed to the citizens and property of Custer County by wildfires.

**NOW, THEREFORE, BE IT ORDAINED BY THE CUSTER COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:**

**SECTION I. DEFINITIONS:**

- A. **Open Fire:** Means any outdoor fire, including campfires and burn barrels, which is not contained within a fully enclosed fire box or structure from which the products of combustion are emitted directly to the open atmosphere without passing through a stack, duct or chimney. Open Fire shall NOT include Charcoal Grills, Liquid Fuel Grills, as defined herein.
- B. **Charcoal Grill:** Means a metal or stone device not resting on the ground with a metal grate designed to cook food using charcoal briquettes, char wood, hard wood, or similar fuel.
- C. **Liquid Fuel Grill:** Means a metal or stone device designed to cook food using liquefied or gaseous combustible fuel.

- D. **Burn Barrel:** Means a metal container used to hold combustible or flammable waste materials so they can be ignited outdoors for the purpose of disposal. Burn Barrels must be covered with a metal grate at any time when being used. Burn Barrels must be located in a safety zone devoid of all combustible materials 15 feet in radius from the center of the burn barrel while in use.
  
- E. **Outdoor Fireplace:** Means a manufactured appliance constructed of non-combustible materials, with a maximum fuel area of three (3) feet, fueled by cut or split wood, located not closer than 15 feet to any combustible surface and continually attended.
  
- F. **Campground:** Means any permitted commercial campground operated by private individuals or corporations, the State of South Dakota, or the United States Forest Service.

**SECTION II. REGULATIONS:**

**A. Open Fire:**

- 1. No person shall set any open fire when the National Weather Service has declared the Grassland Fire Danger Index to be in the Very High or Extreme category, or a High Wind Watch or Warning, Fire Weather Watch, or Red Flag Warning issued for Custer County from time to time. The prohibition against Open Fire as provided herein shall automatically be suspended during any time period the Grassland Fire Danger Index falls below the Very High category, and no High Wind Watch, or Warning, Fire Weather Watch, or Red Flag Warning is in place.

**B. Burn Barrels:**

- 1. Special regulation: No person may ignite a fire in a burn barrel when the National Weather Service has declared the Grassland Fire Danger Index to be in the Very High or Extreme category, or a High Wind Watch or Warning, Fire Weather Watch, or Red Flag Warning issued for Custer County from time to time. Use of burn barrels as defined herein is allowed anytime during which the Grassland Fire Danger Index falls below the Very High category and no High Wind Watch, or Warning, Fire Weather Watch, or Red Flag Warning is in place.

**C. Campgrounds:**

1. The ban on open burning does not apply to those designated areas falling within the boundaries of any permitted commercial, state or federal campgrounds unless otherwise specifically banned by resolution of Custer County Board of Commissioners.

**SECTION III. PENALTY FOR VIOLATIONS:**

- A. Anyone who fails to perform any act required or who does any prohibited act pursuant to this ordinance, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500) or by imprisonment for a period not to exceed thirty (30) days, or by both fine and imprisonment for each offense, pursuant to SDCL 7-18A-2.
- B. Additionally, pursuant to SDCL 34-35-9, and 34-35-10 and 10.1, and 34-35-12, as amended from time to time, any violator of this ordinance may also be subject to additional penalties and costs associated with causing or setting a fire and the suppression costs of extinguishing any fire resulting therefrom.
- C. Nothing herein shall be construed to prohibit or supersede any civil remedy otherwise available to any person or entity.
- D. The permissibility of the ignition of any fire as specified herein shall not operate to relieve the ignitor of any duty of care otherwise imposed by law; nor shall this ordinance operate to absolve any person of any liability for damages to persons or property which may occur as a result of any fire.
- E. This ordinance does not supersede applicable state or federal law, and people shall comply with and remain subject to applicable state and federal law and any penalties associated with applicable state and federal law.

**SECTION IV. REPEAL OF CUSTER COUNTY ORDINANCE NO. 14:**

The Commission hereby repeals Custer County Ordinance No. 14 – To Establish Penalties for Violation of Burn Bans and Permits (Dated July 25, 2007).

Adopted this 14th day of April, 2021 by the Custer County Commission. This Ordinance No. 20 shall become effective on the twentieth (20<sup>th</sup>) day after publication.

**H. Resolution 2021-09**

1. Motion by Bies and seconded by Hartman to approve Resolution 2021-09 Resolution Opposing the Federal Government's "30 X 30" Land Preservation Goal; vote taken, all aye; motion carried.

**RESOLUTION OPPOSING THE FEDERAL GOVERNMENT'S**  
**"30 X 30" LAND PRESERVATION GOAL**

WHEREAS, Custer County (the "County") is a legal and political subdivision of the State of South Dakota for which the Board of County Commissioners ("Board") is authorized to act; and

WHEREAS, the land in the County, approximately 994,568 total acres, is under the ownership and/or control of federal, state, local and private parties; and

WHEREAS, the United States and State of South Dakota governments own and/or manage approximately 48% of the land within the County; and

WHEREAS, designating lands as wilderness does not assure its preservation. Left in an undisturbed or natural state, these lands are highly susceptible to wildland wildfires, insect infestation and disease, all of which degrades the natural and human environment; and

WHEREAS, because of the predominance of federal land in the County, the well-being, health, safety, welfare, economic condition, and culture of the County, its businesses, and its citizens depend on the manner in which these lands and their resources are used and access to these lands; and

WHEREAS, many of the County's businesses and its citizens are involved in or otherwise depend on industries that utilize federal lands and their resources, including the forest products industry, livestock grazing, mineral development, recreational industries, hunting and other outdoor recreation; and

WHEREAS, these industries are important components of the South Dakota economy, and are major contributors to the economic and social wellbeing of Custer County and its citizens; and

WHEREAS, on January 27, 2021, President Joseph R. Biden, Jr., issued Executive Order 14008 entitled Tackling the Climate Crisis at Home and Aboard (86 Fed. Reg. 7,619); and

WHEREAS, in Section 216 of Executive Order 14008, President Biden directed the Secretary of the Interior, in consultation with the Secretary of Agriculture and other senior officials, to develop a program to conserve at least 30 percent of the lands and waters in the United States by 2030, which is called the “30 x 30” program; and

WHEREAS, under the 30 x 30 program, some 680 million acres of our Nation’s lands would be set aside and permanently preserved in its natural state, preventing the productive use of these lands and their resources; and

WHEREAS, there is no constitutional or statutory authority for the President, the Department of the Interior, the Department of Agriculture, or any other federal agency to set aside and permanently preserve 30 percent of all land and water in the United States, and no such authority is referenced in Executive Order 14008; and

WHEREAS, the 30 x 30 program, if implemented, is likely to cause significant harm to the economy of Custer County, and injure the County’s businesses and its citizens by depriving them of access to public lands and national forest system lands and preventing the productive use of these lands’ resources; and

WHEREAS, the withdrawal of some 680 million acres of federal lands from multiple use and placement of such lands in permanent conservation status will cause dramatic and irreversible harm to the economies of many western states, including South Dakota, and in particular rural counties such as Custer County whose citizens depend on access to federal lands for their livelihoods; and

WHEREAS, Executive Order 14008 at 216(a) directs the Secretary of the Interior, in consultation with other relevant federal agencies to “submit a report to the Task Force within 90 days of the date of this order recommending steps that the United States should take, working with State, local, Tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of our lands and waters by 2030.”

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Custer County, South Dakota, as follows:

BE IT RESOLVED, the Board opposes the 30 x 30 program, including its objective of permanently preserving 30 percent of the Nation’s lands in its natural state by 2030, or any similar program that will set aside and prevent the productive use of millions of acres of our lands.

BE IT FURTHER RESOLVED, the Board further opposes the designation of public lands and national forests in Custer County as wilderness, wilderness study areas, wildlife preserves, open space, or other conservation land, thereby restricting public access to such lands and preventing the development and productive use of the resources on or within such lands.



BE IT FURTHER RESOLVED, the Board supports the continued management of the public lands and the national forests under principles of multiple use and sustained yield, recognizing the Nation's need for domestic sources of minerals, energy, timber, food, and fiber.

BE IT FURTHER RESOLVED, the Board supports maintaining and enhancing public access to public lands and national forests and opposes road closures, road decommissioning, moratoria on road construction, and other limitations on public access for the purpose of fulfilling the 30 x 30 program's objectives.

BE IT FURTHER RESOLVED, the Board recognizes and supports the State of South Dakota's water rights system, including the doctrine of prior appropriation and other state laws and programs governing water rights and water use, and opposes any federal designation of waters and watercourses within the County that would impair or restrict water diversions and uses authorized under South Dakota law.

BE IT FURTHER RESOLVED, the Board supports reasonable national, regional, and global greenhouse gas emissions policies and goals that are comprehensive, practical, cost-effective, and do not unnecessarily single out specific industries or activities, but opposes the use of global climate change as an excuse to set aside large tracts of land as preserves or open space to fulfill the 30 x 30 program's objectives.

BE IT FURTHER RESOLVED, the Board maintains that the designation of public lands and national forest lands as wilderness, wilderness study areas, wildlife preserves, open space, or other conservation land to fulfill the 30 x 30 program's objectives may lawfully occur, if at all, only through the planning process mandated by the Federal Land Management and Policy Act (for public lands) or the National Forest Management Act (for national forest lands), including public notice and an opportunity to comment, analysis and disclosure of the impacts of such land acquisitions on the well-being, health, safety, welfare, economy, and culture of Custer County, its businesses, and its citizens.

BE IT FURTHER RESOLVED, the Board also maintains that any non-federal lands or other rights that are acquired to fulfill the 30 x 30 program's objectives should be acquired only from willing landowners and for the payment full and fair market value for all rights and interests acquired, and not through regulatory compulsion, and only after analyzing and considering the impacts of such land acquisitions on the well-being, health, safety, welfare, economy, and culture of Custer County, its businesses, and its citizens.

BE IT FURTHER RESOLVED, the Board shall send a copy of this Resolution to the Department of Interior, Department of Agriculture and all other relevant Federal and State agencies; and

This Resolution shall become effective on the twentieth day after its completed publication.

**I. 8:30 a.m. Public Hearing**

1. A public hearing was held for a Petition For Vacation of Section Line Highway Right of Way from Kevin Hartman on Svoboda TR (PT of Dawson TR a PT of Richardson PL#724) located in Sections 20 & 21, T3S, R5E, B.H.M., Custer County, South Dakota. There was no one in attendance to either oppose or support the petition.

**J. Planning**

1. Motion by Bies and seconded by Linde to approve Resolution 2021-10 Vacation of Section Line Highway Right of Way; vote taken, all aye; motion carried.

**Resolution 2021-10**

**Vacation of Section Line Highway Right of Way**

WHEREAS, application has been made for the purpose of vacating that portion of Section Line Highway Right- of- Way Running North to South starting at the Southerly points of contact with Heller road running South approximately 345 feet through Svoboda Tract. All laying between sections 20 & 21 T3S, R5E, BHM, Custer County, South Dakota. All referenced on 4 Plat 31, Filed at the Custer County Register of Deeds office.

WHEREAS, The Board of Custer County Commissioners have determined that the public's interest will be better served by vacation of this public access easement.

NOW THEREFORE< BE IT RESOLVED THAT The Custer County Board of Commissioners approves the vacation of the before mentioned public access easement.

Dated this 28<sup>th</sup> day of April, 2021

2. Motion by Hartman and seconded by Bies to approve the Final Plat of Bickner Subdivision, a Plat of Tract A of Bickner Subdivision Located in the SE4SW4 of Section 9, T3S, R7E, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.
3. Motion by Hindle and seconded by Linde to approve the Final Plat of Lot 16A and Lot 16B of CBJJ Subdivision, Located in Gov't Lot 3 and Gov't Lot 4 of Section 18, T6S, R4E, and the E2SE4 of Section 13, T6S, R3E, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.
4. Motion by Bies and seconded by Hartman to approve the Final Plat of Lot 1, Cobb Ridge Subdivision in the SE4 and S2S2NE4 of Section 33, T3S, R7E and the W2 of Section 31, T3S, R7E, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.

5. Motion by Hindle and seconded by Linde to approve the Final Plat of Tract 12 of Hartshorn Ranch Estates Subdivision, Located in the E2SW4 and W2SE4 in Section 8, T4S, R7E, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.
6. Motion by Hartman and seconded by Hindle to approve the Final Plat of Tract B Revised and Tract C Revised of H.E.S. 476, Located in the E2 of Section 18, T4S, R4E, B.H.M., Custer County, South Dakota; vote taken, all aye; motion carried.

**K. SDSU Extension Service**

1. Erin McGlumphy, 4-H Youth Program Advisor, gave a 4-H update to the commissioners. Currently there are 85 youth enrolled, 30 adult volunteers and 9 cloverbuds. 4-H Achievement Days will be held August 12 – 15, 2021 at the Custer County Fairgrounds.

**L. 1881 Courthouse Museum**

1. Rick Wheeler, Museum Board member presented to the commission. The restoration project for the museum is scheduled to begin on May 3, 2021. The new director for the museum will be starting in May.

**M. Custer County Airport**

1. Motion by Hartman and seconded by Bies to approve and authorize the chairman to sign the Release and Indemnity Agreement from City of Rapid City; vote taken, all aye; motion carried.
2. Motion by Hindle and seconded by Linde to approve and authorize the chairman to sign the CARES Act Airport Grant Close-Out Report; vote taken, all aye; motion carried.

**N. Elderly Assessment Freeze**

1. Gail Ertel presented to the commission on her concerns with the limitations on the valuation of property to qualify for the Elderly Assessment Freeze. Director of Equalization, Leah Vissia, stated the Custer County States Attorney needs to give her interpretation of SDCL 10-6A-3.

**O. Public Comment –** There were no comments from the public.

**P. Commission**

1. Mail call – A letter from Frank Schroth resigning as Buffalo Gap Volunteer Fire Department Chief; Letter from Black Hills Regional Multiple Use Coalition regarding Board of Directors meeting.
2. Meeting Schedule – Black Hills Association of County Commissioners and Officials will hold a meeting May 14, 2021 in Oglala Lakota County
3. Meeting Reports – Commissioner Hindle attended the Custer County Department Head breakfast; Commissioner Linde attended a Resource Advisory meeting; Commissioner Lintz attended a “30 X 30” Land Preservation meeting.
4. Discussion was held on forming a Committee/Study Group to address the tax issues for Custer County. Lea Anne McWhorter volunteered to head up the group.

**Q. Search & Rescue**

1. Retired Search & Rescue Director Rick March was presented a canvass print and gift cards for his years of service as the Custer County Search & Rescue Director. The commission thanked Rick for his dedication to the position.

**R. SD Wildland Fire Office**

1. Jay Wickham, Assistant Chief of Operations for SD Wildland Fires, presented a jacket to former Wildland Office employee and newly appointed Custer County Emergency Management Director, Steve Esser. Wickham expressed his appreciation for Steve's years of service.

**S. Old Business**

1. The consensus of the commission was to allow each Department Head to proceed with removing germ shields from office windows at the Department Head's discretion.
2. The commission acknowledged the letter of intent from Elk Mountain School District in favor of supporting the Western Custer County Well Project with a transfer of land.
3. Motion by Hartman and seconded by Linde to authorize Commissioner Legal Counsel Susan Anderson to revise the current Custer County Airport Hangar Lease Agreement to include verbiage for the county to have the option to purchase the hangar at the assessed value if the county terminates the lease; vote taken, all aye; motion carried.

**T. Adjourn**

Motion by Bies and seconded by Linde to adjourn the meeting at 9:57 a.m. The next meeting will be at 8 a.m. May 12, 2021 in the Commissioner's Room in the Custer County Courthouse.

---

Jim Lintz, Chairman

Attest:

Terri Cornelison, Custer County Auditor

Published once at the total approximate cost of \_\_\_\_\_.