

Minutes of the Custer County Commission Meeting Wednesday, March 8, 2023.

Members Present:

Commissioners Jim Lintz, Mark Hartman, Craig Hindle, Mike Linde and Michael Busskohl. Finance Officer Dawn McLaughlin and Legal Counsel Susan Anderson were also in attendance.

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

A. Adopting of the Agenda.

1. Amend Agenda to add Executive Session as per SDCL 1-25-2(3) after Item "D-Conflict of Interest Declarations". Motion to approve as amended made by Hartman; seconded by Busskohl; vote taken, all aye; motion carried.

B. Consent Agenda

1. Travel Requests as follows: a) Highway Department: Kevin Treloar and Jesse Doyle to attend 2023 Conference in Deadwood 3-21-2023 through 3-23-2023 at a cost of \$207.20 for registration fees only; no lodging or meal per diem is being requested. b) Sheriff's Department: Elizabeth Allen to attend Criminal Interdiction Conference in Pierre 3-27-2023 through 3-29-2023 at a cost of \$100.00; no lodging is requested.
2. Vouchers approved as follows:

PAYROLL: 3-5-2023 Payroll: Commissioners \$9,049.36; Auditor \$7,217.48; Treasurer \$10,457.67; Info Systems & Technology \$3,159.01; State's Attorney \$13,015.41; Courthouse Building \$7,296.83; Director of Equalization \$15,885.92; Register of Deeds \$4,800.43; Veterans Services \$1,514.29; Human Resources \$2,571.98; Sheriff \$40,511.64; Coroner \$803.40; Nurse \$815.73; Library \$8,238.49; Conservation \$737.72; Weed & Pest \$2,213.24; Planning \$6,307.69; County Road & Bridge \$36,932.61; Emergency Management \$3,066.77; 24/7 Sobriety \$1,425.00; Emergency Line F \$15,741.34.

NON-DEPARTMENTAL: SD State Treasurer \$31049

COMMISSIONERS: Southern Hills Publishing \$400.49; Golden West Telecom \$27.14; Ramkota \$105; BH Regional \$100.

COURT: Katherine Wakefield \$76.52; Victor Gomez \$200; Bethany Bremer \$52.04; Julie Drussell \$52.04; Linda Enders \$86.72; John O'Connell \$51.02; Lisa Trana \$52.04; Steven Trump \$75.50.

AUDITOR: Tracy Fish \$1,933.47

TREASURER: Quill \$81.35; Golden West Telecom \$136.59

INFO SYSTEMS & TECHNOLOGY: Golden West Telecom \$54.29

STATES ATTORNEY: LexisNexis \$370; Golden West Telecom \$135.72; Culligan \$44.50; RC Police Dept. \$60.00

MAINTENANCE: BHEC \$6,539.32; Amerigas \$860.51; McGas Custer \$875.51; Sander Sanitation \$19.10; AdTech \$2,066.29; Custer Ace Hdwe \$27.98; Golden West Telecom \$27.14; A-Z Shredding \$6.40; G&R Controls \$285.25

DIRECTOR OF EQUALIZATION: Golden West Telecom \$190.01

REGISTER OF DEEDS: Golden West Telecom \$54.29

VETERANS SERVICES: Golden West Telecom \$27.14

INFO TECHNOLOGY: Golden West Technologies \$7,072.51; Quill \$744.80; Golden West Telecom \$680; Pitney Bowes \$462.57

HUMAN RESOURCES: Golden West Telecom \$27.14; Jackie Bauer \$1,196.49

SHERIFF: Southern Hills Publishing \$131.80; French Crk Supply \$3.19; Innovative Office \$90.73; Golden West Telecom \$274.48; L&A Welding \$95.95; SD Dept Public Safety \$2,950; A-Z Shredding \$28.84

PRISONER CARE: City of Rapid City \$80; Fall River Co. Sheriff \$190; Pennington County Sheriff \$16,704.26; Pharmchem \$63.90; Satellite Tracking \$6.50; Jacquelyn Nelson \$75; Linda Nohr \$150.

SEARCH & RESCUE: Golden West Telecom \$93.95

AIRPORT: French Crk Supply \$5.59; Brenden Hendrickson \$4,210; Golden West Telecom \$113.93; Epic Aviation \$21,248.40

MENTALLY ILL: Audra Hill Consulting \$489.46

MENTAL HEALTH CENTER: Audra Hill Consulting \$125.63

LIBRARY: Southern Hills Publishing \$120.11; Mt. Rushmore Telephone \$134.40; Golden West Telecom \$118.48

EXTENSION: Golden West Telecom \$118.12; Erin McGlumphy \$1,107.85; Fall River County \$1,298.18

WEED & PEST: Golden West Telecom \$27.14; Justice Fire & Safety \$80.75

PLANNING: Southern Hills Publishing \$74.42; Golden West Telecom \$108.58

COUNTY ROAD & BRIDGE: A&B Welding \$12.09; BHEC \$67.60; Butler Machinery \$485.43; Southern Hills Publishing \$17.70; French Crk Supply \$506.16; Fastenal \$480.58; The Overhead Door Co. \$4,267.20; Pheasantland Industries \$1,721.90; S&B Motors \$92.76; SD DOT \$204; Kieffer Sanitation \$247.36; Servall \$130.31; Town of Buffalo Gap \$61; Snap On Tools \$262; BH Truck & Trailer \$4,769.86; Custer Ace Hdwe \$138.29; Golden West Telecom \$359.51; Runnings \$140.02; Sturdevants \$61.28;

Justice Fire & Safety \$1,613.54; Pumps Tire \$79.95; Culligan \$6.50; Nelson's Oil & Gas \$2,274.54; Advanced Drug Testing \$35.00.

FIRE PROTECTION: Argyle VFD \$11,000; Buffalo Gap VFD \$5,000; Dewey VFD \$2,500; Folsom VFD \$5,750; Highlands VFD \$7,500; Pringle VFD \$8,000.

EMERGENCY MANAGEMENT: Golden West Telecom \$44.98

24/7 SOBRIETY: Concordance Healthcare \$21.65

EMERGENCY LINE F: CDW Government \$239.88; Golden West Telecom \$616.15; SD Dept of Public Safety \$2,950.00

Motion to approve Consent Agenda made by Hindle; seconded by Linde; vote taken, all aye; motion carried.

D. Conflict of Interest Declarations—None

E. Executive Session as per SDCL 1-25-2(3)

1. Executive Session entered into at 8:03 AM and concluded at 8:14 AM. No action taken.

F. Maintenance Department

1. Maintenance Supervisor Joseph Panza requested Commission approval to dispose of and recycle obsolete and non-functioning typewriters, monitors, etc. Motion to approve made by Hartman; seconded by Linde; vote taken, all aye; motion carried.

G. County Initiative Petition re: French Creek

1. Steve Beardsley, Attorney representing concerned citizens presented the Commission with the following: County Initiative Petition re: "Discharging any treated water from the Custer City, South Dakota sewage treatment plant into French Creek or its tributaries, within the boundaries of Custer County, South Dakota is a nuisance". Beardsley, on behalf of his clients, requested the required and verified petition presented be accepted by the Commission as per SDCL 7-18.A-13, which indicates that the Board shall enact the proposed ordinance or resolution and shall submit it to a vote of the voters in the matter described for a referendum within 60 days after the enactment. Beardsley requested that the Commissioners follow the South Dakota Law that requires an election and is open to any questions or concerns by the Commissioners regarding this proposal. Mr. Beardsley stated he has discussed the matter with State's Attorney, Tracy Kelley. Kelley noted there were different options that could be taken. The first option would be to hold a special election within 60 days; the second option would be to not put the issue to a vote and the matter would be dealt with through a writ of mandamus prior to any election or would deal with after an election, if passes, to receive the blessing of the Court so that the County would know if they had authority to enforce the nuisance or not. Kelley stated she is not in favor of having unenforceable ordinances on the books, which can create additional problems in the future. She stated the

wastewater issue will be ongoing so it would be best to decide the matter. She noted the 60-day time frame does not match up with the general election date of June 6, 2023 and stated that the expense of holding a special election is a concern for Custer County. She stated that this could be discussed with the Petitioners regarding the timing of holding a special election vs. waiting until the June 6, 2023 general election to see which date would be more feasible. Commissioner Hartman stated that since all of the requirements have been met, it is clear that the County will have to hold an election, and Custer County will not deny them that right. He inquired if the Petitioners could pull the petition and resubmit it to close the 30-day gap between holding a special election and the general election, thus saving approximately \$21K by combining with the city and school elections. Beardsley stated that perhaps the Petitioners could choose to hold the vote until the general election; thus eliminating the need to resubmit the petition. Motion to approve holding the election on June 6, 2023 made by Hartman; seconded by Hindle; vote taken, all aye; motion carried. Chairman Lintz noted that when the Petitioners first approached the Commission, he felt that the Commissioners did not have a standing and encouraged the Petitioners to follow legal procedures, which they did, so an election will be held.

H. Highway Department

1. Superintendent, Jesse Doyle appeared before the Commission and requested approval for the following ROW Occupancies:
 - a) ROW Occupancy by Mt. Rushmore Telephone Company for fiber optics facilities/cable installation for Oak Meadows area project. Motion to approve made by Hindle; seconded by Hartman; vote taken, all aye; motion carried.
 - b) ROW Occupancy by Mt. Rushmore Telephone Company for fiber optics facilities/cable installation for north of Red Shirt, SD area project. Motion to approve made by Busskohl; seconded by Linde; vote taken, all aye; motion carried.
 - c) ROW Occupancy by Mt. Rushmore Telephone Company for fiber optics facilities/cable installation for FAS 152 project. Motion to approve made by Hartman; seconded by Linde; vote taken, all aye; motion carried.
 - d) ROW Occupancy by Mt. Rushmore Telephone Company for fiber optics facilities/cable for Spring Creek Cutoff to Spring Creek project. Doyle noted this is the most widespread of the upcoming projects. Motion to approve made by Hindle; seconded by Linde; vote taken, all aye; motion carried.
2. Doyle presented a section line improvement matter re: Harris Lane and Aspen Lane that was tabled from the 2-22-2023 meeting. Commissioner Busskohl inquired whether or not the Commission wanted to keep looking at this project; Commissioner Linde stated the USFS is fairly cooperative at this point and the matter bears further investigation. Busskohl said he would like to see this project take place as it would be beneficial in emergency situations; would act as a fire break and an alternative route for access in and out of Custer City. Commissioner Hindle disagreed. It was noted that this section line improvement

proposal is only in the discussion phase and construction is not being approved at this time and more research would need to be conducted. Concerned residents of Harris Lane addressed the Commission and spoke about the possibility of their property being encroached upon should the project take place. Commissioner Hartman reassured them that this is a concept only at this point in time and there would be discussions with affected landowners, as well as public hearings conducted long before construction could take place. Chairman Lintz thanked the public for their input into the matter. Further discussion was held and motion to approve further investigation into the matter and study conducted made by Busskohl; seconded by Linde; vote taken, Hartman, Busskohl, Linde aye; Hindle nay; motion carried.

I. Gebes Tract North/Gebes Tract South

1. In absence of Mr. Gebes, Motion to table matter until the 3-22-2023 Commission meeting made by Hartman; seconded by Hindle; vote taken, all aye; motion carried.

J. Star Valley Road District

1. Finance Officer, Dawn McLaughlin, presented a petition for approval to create a new road district, "Star Valley Road District" to encompass the following: Timber Tract Ridge; Tract Hidden Haven; Tract Wander Acres; Tract Whispering Pines (Star Valley Reserve); Beecher Tract Lot 1R, 2-5; Lot 6R; Lot 7R, 8-17; Lot 18R, 19-22; Reyelts Tract Lot 24R; Lot 25R; Lot 26; Lot 27R; Lot 28R; Lot 29; Start Tract 2 (Star Valley Estates) Custer County, South Dakota. All of the initial requirements have been met and motion to approve made by Hartman; seconded by Hindle; vote taken, all aye; motion carried.

K. Equalization

1. Director Leah Vissia presented an abatement request in the amount of \$13.61 re: Jack Larsen; SE4 NE4 NW4 Section 36 T3 R4 10 acres. Vissia stated a galvanized carport was removed resulting in the abatement request. Motion to approve made by Linde; seconded by Busskohl; vote taken, all aye; motion carried.

2. Vissia also requested an abatement in the amount of \$473.26 re: Lann Shorb/Lex Burgers; S2 SW4 SW4 NW4 Sec 29 T2 R8 4.48 acres. Vissia explained that the property initially had owner-occupied status which was removed by DOE; and after further investigation, owner-occupied status was reinstated. Motion to approve made by Hindle; seconded by Linde; vote taken, all aye; motion carried.

3. Vissia presented an update on temporary employees in her department and stated that she understood those employees could only work on the reappraisal process and not be used in other projects when she first proposed a layoff for the month of March. Commissioner Hartman assured her that they may be used for other work in not only her office, but other offices if additional help was needed for projects. Vissia shared that one temporary employee, Charles Poehls, has resigned effective March 10, 2023. Moving forward, this full-time temporary position will be unbenefited, but could be rolled into a full-time benefited position in the future.

4. Vissia requested transfer of a copier/printer from another office, noting that her office currently shares printer use with Register of Deeds. It was decided that the unit should remain in the current office and requested Vissia research obtaining a permanent printer for the DOE office

5. Director Vissia informed the Commission of upcoming training to be held in Rapid City in September, 2023. She requested permission for her staff to stay overnight to allow for study time. This class is needed for appraiser recertification. She stated she will be requesting 4 nights' stay and per diem for 5 employees; Commissioners stated the request will be approved once submitted.

L. 2nd Reading: Amendment #1 to Custer County Ordinance No. 23.

1. Legal Counsel, Susan Anderson, presented the following second reading: "Amendment #1—Dated February 22, 2023 to Custer County Ordinance No. 23; an Ordinance Creating Licensing Provision to Cannabis Establishments within Custer County". Anderson stated the amendment raises the initial application fee to \$125K; noting the annual renewal fee remains at \$50K.

AMENDMENT #1 – DATED FEBRUARY 22, 2023
TO
CUSTER COUNTY ORDINANCE NO. 23

AN ORDINANCE CREATING LICENSING PROVISIONS
FOR CANNABIS ESTABLISHMENTS WITHIN CUSTER COUNTY

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY, SOUTH DAKOTA:

Custer County Ordinance No. 23 shall be amended as follows:

Under Section 4. LICENSE APPLICATION


(b) The applicant must submit the following:


Subsection [1] shall be deleted in its entirety and replaced with the following:

[1] Application fee of \$125,000.

Except as specifically amended, modified, or changed by this Amendment #1, the Custer County Ordinance No. 23 – AN ORDINANCE CREATING LICENSING PROVISIONS FOR CANNABIS ESTABLISHMENTS WITHIN CUSTER COUNTY, is, and will continue to be, in full force and effect.

CUSTER COUNTY COMMISSION


Jim Uetz, Chairman

Attest: 
Barbara Cox, Deputy Auditor



First Reading: February 22, 2023
Second Reading: March 8, 2023
Published Date: _____
Effective Date: 20 Days Following Published Date
Vote: _____ Aye _____ Nay

M. Custer County Chronicle

1. Jason Ferguson appeared before the Commission to discuss the 2023 Progress Edition; noting this is the largest annual issue. This edition highlights local businesses and employees. Ferguson noted this promotion is offered at the same rate as last year; which is \$975. Ferguson stated he will be taking photos for this issue; as well as the official Commission portrait for 2023.

N. Library

1. Library Director, Jessica Phelps, discussed the library closure policy, as well as the library schedule, noting that the library maintains hours that differ from those of the Courthouse. Phelps requested permission for the library to close for the Veteran's Day holiday in November and noted she will publically post library closures.

2. Phelps gave an update on the Hermosa branch. She stated the committee is in the planning stages and it is their desire to provide the best library possible to residents of eastern Custer County.

3. Director Phelps noted she has hired three part-time library relief positions and stated this is very helpful to the library. She said the position garnered much interest.

O. 1881 Courthouse Museum

1. Finance Officer McLaughlin presented a request for release of previously assigned funds in the amount of \$11K to the 1881 Courthouse Museum. These funds are instrumental in the hiring of a part-time museum director. Motion to release funds made by Hartman; seconded by Hindle; vote taken, all aye; motion carried.

P. Public Comment

1. Dan Holsworth addressed the Commission and noted the Town of Hermosa is working on the WRT project; that a Colorado company is performing testing and results are forthcoming. He stated the lagoon project is progressing and addressed a circulating petition regarding term limits on the town board. Holsworth said there are currently 3 board positions town open. He also thanked Chairman Lintz for the County's work on the French Creek Initiative election.

2. Concerns were shared regarding the condition of the existing French Creek waste water line; noting its failing condition and at what cost to the County's taxpayers. Peg Ryan, City of Custer, stated the line will be capped and left in place.

3. Questions were raised regarding the effect if the French Creek Initiative passes. Peg Ryan stated the Custer City attorney believes the city cannot be held responsible since the state issued the permits and the process was met and approved by the state. If the initiative passes and declared a nuisance, it will be a moot point. Ryan asked the Commission if they are allowing the French Creek Initiative election to take place because they felt threatened by Mr. Beadsley's earlier statements. Commissioner Hartman emphatically reiterated that it is because the petitioners followed the legal process and met the requirements and so due process will follow.

4. Joe Bawdon, resident of Star Valley Estates, addressed the issue of three houses still located in the public right of way, adversely affecting access of emergency vehicles in the area. Commissioner Busskohl stated this is a grey area at this point and that residents should speak to the State's Attorney. Commissioner Hartman inquired about sending certified letters to the owner. It was noted that

these houses are located in a platted public right of way and cannot legally remain blocking the access.

Q. Commission

1. Mail Call as follows:
 - a) Thank you letter from the Custer Senior Center for the County's monetary donation.
 - b) Letter from Marya Tellinghuisen re: Rural Attorney Recruitment Program.
 - c) Letter from Martha Studt re: Upper French Creek gold mining exploration.
2. Meeting Schedule: Commissioner Linde noted a landfill meeting to be held 3-9-2023.
3. Meeting Reports: Commissioner Busskohl attended a road superintendents' meeting with Jesse Doyle; City Council meeting; Custer County Housing; Custer County Planning and a Historical Society Meeting, where it was noted an offer was made to a prospective part-time director. Commissioner Hartman attended Custer County Planning and Custer County Housing meetings. He also participated in conducting interviews for prospective Custer County Sheriff's deputies.
4. Susan Anderson drafted and presented standard Custer County property leases, which will be used to streamline and keep current those leases between various entities and Custer County. The leases hold standard terms and conditions between the parties and can list specific details as well. It was noted there is a provision stating that if an entity receives monies from the County, it will be subject to an audit of funds by the County. Betty Dikoff, Custer County Fair Association asked if the new lease should be drafted for the Fair Association or keep the old one in place. It was decided a new lease will be drafted for all entities. Motion to approve General Lease and Lease Agreement made by Hindle; seconded by Busskohl; vote taken, all aye; motion carried.
5. Susan Anderson presented a letter of resignation to the Commission. Chairman Lintz thanked Anderson for all of her help; noting her absence will be a great loss. The Commission agreed and stated their appreciation.

R. Planning

1. Planning Director, Terri Kester presented Revised Resolution 2022-19 Vacation of Section Line Highway Right of Way noted the legal description was updated to include township and range. Motion to approve made by Hartman; seconded by Hindle; vote taken, all aye; motion carried.



CUSTER COUNTY

Prepared by:
Custer County Auditor's Office
420 Mt. Rushmore Road
Custer, South Dakota 57730
605-673-8173

Revised

Resolution 2022-19

Vacation of Section Line Highway Right of Way

WHEREAS, application has been made for the purpose of vacating a 66' wide Section Line Right-of-Way running West to East approximately 1,075 ft between TR A-1 of HES #358, Section 33, T4S, R4E & Tract Wild Iris #2 & Tract Wild Iris #1 Section 4, T6S, R4E, BHM, all in Custer County, South Dakota. All referenced on 12 Plat 686 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 8th day of March, 2023

Approved by Commission

X *Jim Lintz*
Jim Lintz, Chairman



ATTEST: *Barbara*

Published Date: 3-15-2023 & 3-22-2023

Effective Date: 4-21-2023

S. Airport

1. Airport Manager, Brendan Hendrickson presented the 2022 Annual Review and Revenue Overview. He stated the Custer County airport received an A+ rating and DOT noted the airport is in excellent condition. Hendrickson noted some highlights of 2022 including financial; fuel sales; progress on the new fuel delivery system. The Commission thanked him for his hard work.

T. Town of Hermosa

1. Dan Holsworth, Town of Hermosa appeared before the Commission to discuss Parcel 015656; Permit No. 2022-09 194 Fairgrounds Place, Hermosa, SD. Holsworth began by noting this is a unique property situation regarding setbacks, encroachment on sewer easement, drainage concerns, survey costs and precedence if this situation is allowed to go unchecked. Holsworth contends that the property owner's new home is encroaching 8.4" into a 20-foot sewer easement and therefore, should be relocated from its current location as to not be encroaching. He also contends that the homeowner should reimburse the Town of Hermosa for the cost of the survey (ordered by the Town of Hermosa) that made that determination. Holsworth did admit this property was inspected and plans approved before the landowner had her home set on the pylons. Once the encroachment was discovered, a "stop work order" was issued to the homeowner. Holsworth asked the Commission for their support based on the extra-territorial agreement; noting that this property is not located within the Hermosa city limits,

but rather in the extra-territorial jurisdiction. He stated they have tried to work together to resolve the issue to no avail. Commissioner Hartman inquired whether Custer County Ordinance No. 2 addresses the issue of requiring a landowner to move their home to meet setback requirements or easement encroachments and was informed that that it has not required relocation and that a variance has been issued in those cases instead. After looking at the survey, Hartman stated the easement appears to be large enough to allow for this small encroachment and recommended that a variance should be applied for and issued. Homeowner, Pam Somervold was in attendance and addressed the Commission with her concerns. She stated there were many inconsistencies in Holsworth's statements and said the Town of Hermosa has not communicated with or notified her before taking actions against her. Commissioner Hartman asked how a valid "stop work order" could be issued by the municipality when the property is not located within the city limits. He stated that order could only be issued by the County. After much discussion and disagreement, the Commission suggested that both parties communicate via their respective attorneys. It was determined that further research will be made into the matter of the extra-territorial agreement. Motion to table matter until the March 22, 2023 Commission meeting made by Hartman; seconded by Hindle; vote taken, all aye; motion carried.

U. Executive Session Pursuant to SDCL 28-13-42 and SDCL 1-25-2(1)

1. Motion to enter into Executive Session re: Indigent Requests as per SDCL 28-13-42 and SDCL 1-25-2(1) at 10:53 AM made by Hartman; seconded by Buszkohl; vote taken, all aye; motion carried. Executive Session concluded at 12:23 PM.
2. Motions made out of Executive Session are as follows:

Motion to approve indigent request #1 for cremation in the amount of \$2,000 made by Hartman; seconded by Hindle; vote taken, all aye; motion carried.

Motion to approve indigent request #2 for cremation in the amount of \$2,000 made by Linde; seconded by Buszkohl; vote taken, all aye; motion carried.

Motion to authorize Todd Fish to perform Human Resources and Veteran Services Officer duties for a term of 1-year made by Hindle; seconded by Linde; vote taken, all aye; motion carried. This will be a full-time position with working hours Monday-Friday 8:00 AM to 5:00 PM with benefits other than health insurance at an annual rate of \$68,640.00.

Motion to approve retaining Susan Anderson as independent consultant for legal services at a rate of \$250 per hour made by Hartman; seconded by Buszkohl; vote taken, all aye; motion carried. Anderson will draft a proposal and job description for her vacated position.

V. Old Business—none.

W. Adjourn the Meeting

1. Motion to adjourn the meeting at 12:31 PM made by Hartman; seconded by Busskohl; vote taken, all aye; motion carried. The next meeting will be at 8:00 AM, March 22, 2023 in the Commissioner's Room in the Custer County Courthouse.

Jim Lintz, Chairman

Attest: _____

Barbara Cox, Custer County Deputy Auditor

Published once at the total approximate cost of _____.