

**Minutes of the Custer County Commission Meeting Wednesday, November 1, 2023.**

**Members present:**

Commissioners Jim Lintz, Mark Hartman, Mike Linde, Michael Busskohl, Craig Hindle and Commission Legal Counsel Aaron Davis and Dawn McLaughlin, Finance Officer.

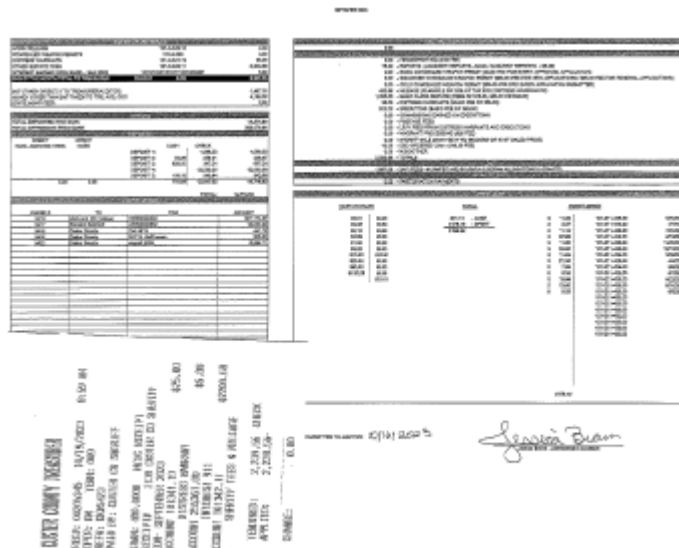
**A. Commission Meeting was called to order at 8:00 AM followed by the Pledge of Allegiance.**

**B. Adopting of the agenda**

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

**C. Consent Agenda**

1. Approval of October 18, 2023 Commission meeting Minutes.
2. Approval of Monthly Reports.



3. Vouchers approved as follows:

**PAYROLL:** 10-25-23: Commissioners \$5,237.62; Auditor \$11,280.85; Treasurer \$12,288.06; Info Systems & Technology \$3,159.03; State's Attorney \$13,838.59; Courthouse Building \$7,599.84; Director of Equalization \$18,650.10; Register of Deeds \$5,149.00; Veteran's Service \$1,154.68; Human Resources \$2,564.52; Sheriff \$44,513.05; Coroner \$803.39; Nurse \$1,012.61; Library \$10,442.77; Conservation \$712.90; Weed & Pest \$3,003.55; Planning \$6,977.04; County Road & Bridge \$38,966.24; Emergency Management \$3,272.19; 24/7 Sobriety \$2,192.46; Emergency Line F \$19,273.41

**COMMISSIONERS:** Southern Hills Publishing \$511.04; Pitney Bowes \$246.54; SDACC \$12,718.38;

**ELECTION:** ES&S \$5,349.75

**AUDITOR:** Quill \$159.19; AmericInn \$711.66; Pitney Bowes \$99.55; Tyler Technologies \$19,627.55

**TREASURER:** Quill \$74.20; Tyler Technologies \$18,975.06

**STATE'S ATTORNEY:** Rapid City Police Dept \$120; Driver & Vehicle Services \$10.50

**COURT-APPOINTED ATTORNEY:** Garland Goff \$1,165.30; Angela Colbath \$1,012.40; Southern Hills Law PLLC \$1,954.51; Duffy Law Firm \$573.60

**MAINTENANCE:** BHEC \$681.18; BH Energy \$684.63; Custer City \$1,744.83; BH Chemical \$215.97; Custer Ace Hdwe \$74.80; Smartsign \$35.57

**DIRECTOR OF EQUALIZATION:** Quill \$78.55; Tyler Technologies \$500.

**HUMAN RESOURCES:** Div Criminal Investigation \$86.50; Hireclick KELOland \$708.

**INFO TECHNOLOGY:** Golden West Technologies \$4,856.51

**SHERIFF:** Southern Hills Publishing \$184.13; French Crk Supply \$43.98; FedEx \$17.68; Pheasantland Industries \$700.99; Sherry Weber \$100.00; Custer Ace Hardware \$80.84; Galls 217.43; Custer City \$340.00; Survival Armor \$14.43; Rapid Towing \$298.76; Pomp's Tire 282.00

**PRISONER CARE:** PennCo Jail \$368.88; Correct RX \$112.62

**AIRPORT:** Brenden Hendrickson \$4110.00

**MENTAL HEALTH:** New Trails \$300.00

**CONSERVATION:** Quill \$44.97

**WEED & PEST:** French Crk Supply \$7.42; Custer Ace Hdw \$11.99; Pump's Tire \$1,327.32; Elaine Immormino \$57.24

**SOBRIETY:** Redwood Toxicology \$1,107.29

**COUNTY ROAD & BRIDGE:** BHEC \$639.23; Butler Mach \$722.09; Floyd's Trk \$994.55; French Crk Supply \$1,316.61; Godfrey Brake \$930.08; Rushmore Comms \$268.49; SD DOT \$4,158.40; Servall \$272.68; Buffalo Gap Town \$73.00; Evans Repair \$307.00; Custer Ace Hdw \$15.99; Grossenberg Impl \$93.32; Culligan \$13.00; Advanced Drug Testing \$56.00; Forward Distributing \$12.45

**EMERGENCY MANAGEMENT:** Southern Hills Pub \$20.03; PennCo Sheriff \$8.60; Genpro Energy Solutions \$504.60

**COUNTY BUILDINGS:** Hills Septic \$550.00; Freeman's Elec \$843.12; Clark Equip \$73,782.61

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

**D. Conflict of Interest Declarations** – Commissioner Hartman declared a conflict on Item #G Highway, number 1 re: ROW Occupancy request on Hard Scratch Lane.

**E. 8:10 Public Hearing**

1. Planning Director, Terri Kester, presented request from Cingular Wireless, PCS, LLC (AT&T to install new cell tower re: Parcel ID# 013111 Mud Springs Road; Part NE1/4 NE1/4 S3 T4S R2E, Custer County, SD. Kester noted this property is on USFS land and the request was presented to the Planning Commission on October 3, 2023 and recommended approval. There was no public comment regarding this request. Motion to approve made by Linde; seconded by Hartman; vote taken, all aye; motion carried.

**F. Planning**

1. Director Kester presented and made a request for approval of Final Plat: CAMPBELL TRACT NORTH & CAMPBELL TRACT SOUTH, LOCATED IN THE NE ¼ OF SECTION 31, T2S, R7E, BHM, CUSTER COUNTY, SOUTH DAKOTA. Parcel ID 003937. This is a proposed lot split and was presented to the Planning Commission on October 3, 2023. Motion to approve made by Hartman; seconded by Busskohl; vote taken, all aye; motion carried.

2. Kester also presented Final Plat: SNYDER TRACT, OF H.E.S #494, LOCATED IN SECTION 16, T4S, R3E, BHM, CUSTER COUNTY, SOUTH DAKOTA. Parcel Nos. 005616 & 005619 and requested Commission approval. This is a proposed lot consolidation. Motion to approve made by Busskohl; seconded by Hindle; vote taken, all aye; motion carried.

3. Kester updated the Commission on the Merchant Trick or Treating and stated there were a total of 454 trick-or-treaters that stopped at the Courthouse booth. She thanked Commissioner Busskohl for participating and providing the candy this year.

**G. Highway Department**

1. Highway Superintendent, Jesse Doyle presented a request approval of ROW Occupancy from Golden West for buried fiber optic facility re: S32,5; T03S, 04S; R05E Hard Scratch Lane, but recommended the Commission not approve this request at this time. Doyle stated that from this point forward, he would like to handle things differently regarding these requests due to installation issues in the ROW; ie. Installations being done by cutting into the surface of roadways, installations not being in the proper location within the ROW and contactor shortcuts. Doyle requested representatives of Heberly Engineering be present at today's meeting to make assurances that from this point forward, installations will be done properly. Doyle noted that in particular, the installation on Hard Scratch Lane, the contractor has every intention of putting the roadway surface in better-than-existing specs but is limited in his efforts due to the poor location of the lines. Doyle stated that if those lines had been installed in the outermost location of the ROW, there would not be a problem today. Travis Velk and Joseph Jette of Heberly Engineering presented informational packets before addressing the Commissioners. Velk stated admittedly there are places where installation has been into the road surface, but explained there are instances where they cannot physically perform installation into the ROW due to rocks, trees, terrain, etc. and choose to take the path of least resistance. Heberly does not have the means to clear the ROW, so must make adjustments to line locations. After lengthy discussion, Doyle stated that moving forward, when large projects are submitted, permits will be sent to Doyle; packets will be gone over together, as well as a physical site visit to make the decision as to where the lines will be dropped. Doyle stated that he will not approve any projects that have plans to drop lines into the road surface. Velk stated that

Heberly Engineering is willing to work with Custer County on future projects for better results. It was noted that the engineering firms may have to survey the site if needed. Custer County has a ROW Occupancy Permit system in place and that the Hard Scratch Lane project should not have been started before permits were issued. Heberly stated it was missed and should have been included in the Sidney Park project. Doyle stated he will speak with Golden West, as well. Motion to table this ROW Occupancy request on Hard Scratch Lane until a representative from Golden West can attend Commission meeting made by Busskohl; seconded by Hindle; vote taken; Busskohl, Linde and Hindle all aye; Hartman abstained; motion carried.

2. Doyle presented a request for approval of ROW Occupancy from Golden West for buried fiber optic facility re: S5; T6S; R4E; 26524 Stagecoach Springs Rd. Motion to approve made by Linde; seconded by Hartman; vote taken, all aye; motion carried.

3. Doyle presented a request approval of ROW Occupancy from Golden West for buried fiber optic facility re: S27; T3S; R4E; French Rd; 25158 Little Teton Rd. Motion to approve made by Hindle; seconded by Linde; vote taken, all aye; motion carried.

4. A request for approval of ROW Occupancy from Golden West for buried fiber optic facility re: S 32; T 3S; R4E; 25262 Wittrock Rd was presented. Motion to approve made by Hartman; seconded by Busskohl; vote taken, all aye; motion carried.

#### **H. Treasurer**

1. Finance Officer, Dawn McLaughlin presented a request to rescind Resolution 2007-9 Allowing Custer County to Sell Tax Sale Certificates and waiving provisions of SDCL 10-23-28.1 prohibiting the sale of tax certificates. This request stems from the recommendation of Custer County State's Attorney, Tracy Kelley, as well as the SD Department of Revenue Legal Counsel. McLaughlin explained that Custer County is one of nine counties that currently sell the certificates. This request follows the most recent US Supreme Court decision in Tyler v. Hennepin County, Minnesota, 143 S. Ct. 1369 (2023) that held, in general that excess monies realized from property sold in accordance with tax deed proceedings could not be maintained by the County. Motion to rescind Resolution 2007-9 allowing Custer County to Sell Tax Sale Certificates and waiving the provisions of SDCL 10-23-28.1 prohibiting the sale of tax sale certificates and that the Custer County Treasurer immediately cease all such sales; that the County hold all certificates until such time as curative action is taken by the South Dakota Legislature to address the recent U.S. Supreme Court decision in Tyler v. Hennepin County, Minnesota, 143 S. Ct. 1369 (2023), and that this motion take effect November 1, 2023 made by Hindle; seconded by Busskohl; vote taken, all aye; motion carried. McLaughlin stated this subject will be discussed at the 2024 Legislative session. McLaughlin said Custer County will hold the certificates and begin proceedings as necessary.

#### **I. Maintenance**

1. Joseph Panza, Maintenance Supervisor, discussed bids received regarding Search & Rescue/Ambulance for asphalt and concrete needed to repair/replace in the parking lots. Panza was originally told that asphalt would come in at a higher price, but ultimately came in at the lowest price, although similar to the concrete pricing for the total project. Panza said that concrete will hold up longer and be a better solution in the long run. He stated there is 55-60K in the budget for 2024 for this project, which includes tear-out of old material. Panza recommended accepting the low bid from K-2 Masonry Concrete. Panza will discuss this with Custer Ambulance, as this will cost them approximately \$2-3K. Sam Smolnisky, not speaking officially on behalf of the Ambulance, stated there are monies set aside in the 2024 budget.

Motion to approve the lowest bid from K-2 Masonry Concrete made by Hartman, as long as it is also approved by Custer Ambulance; seconded by Hindle; vote taken, all aye; motion carried.

2. Panza further discussed the newly-acquired west parking lot asphalt repairs. (S&R Lot) He stated the lot would require major repairs. The bid of \$42,857 for repairs is not in the 2024 budget, as it was not received before the budget was set. Commissioner Hindle stated the funds of \$75K are still set aside for the purchase of this property, which was gifted to Custer County by the City of Custer, and therefore not used. Hindle stated these funds could be used to repair the lot. It was noted this lot is too large for concrete and should have the asphalt replaced. Panza said this would be a project for next year as the weather is too cold at this point.

3. An update was given regarding hail damage to the Courthouse building. Panza has been working with Claims Associates and has received a damage estimate in the amount of \$21,173, less \$2,500 deductible, and has received a check from Claims Associates in the amount of \$18,673.00. Panza stated the repairs will be performed in the spring (possibly summer) 2024.

#### **J. Equalization**

1. DOE Director, Leah Vissia, requested Commission acknowledgement of end of Scott Storms' 6-month probation period. Storms has passed the State CAA certification requirements and Vissia requested a pay increase from \$16.50/hour to \$18.04/hour (certified rate) as of October 20, 2023 to reflect such. The Commission so acknowledged.

#### **K. Custer Community Campus**

1. Matt Fridell addressed the Commission on behalf of Custer Community Campus, and noted there is a large team working on this project. Fridell has been asked to canvass the Custer community as to what should be included. Some suggestions/requests thus far have included a city hall, child care center, rec center, pool, wellness center, community space and teen room. Fridell stated there is a survey available on the City of Custer website and urged the public to participate in the survey; he noted there will be more surveys ahead. Funding for proposed facilities is not yet determined and a specialist has been brought in to review long-term plans. The location will most likely be the former elementary school site and Fridell said it will be late spring or summer before a decision is made. Fridell would like to readdress the Commission once use survey results are in.

#### **L. Auditor**

1. Finance Officer, Dawn McLaughlin, shared a request from Crazy Horse Memorial Foundation to conduct a raffle September 6, 2024. Drawing for 2023 Indian Motorcycle Chieftain Dark Horse will be held that same date. Motion to approve raffle made by Linde; seconded by Busskohl; vote taken, all aye; motion carried.

2. McLaughlin made a request to reschedule the Wednesday, December 27, 2023 Commission meeting to Thursday, December 28, 2023. Motion to approve made by Busskohl; seconded by Hartman; vote taken, all aye; motion carried.

3. Request for approval of Avesis Vision Plan renewal for 2024-2025 was made. Motion to approve made by Hindle; seconded by Hartman; vote taken, all aye; motion carried.

#### **M. County Nurse**

1. Request to approve and have Chairman sign State of SD Department of Health Division of Family and Community Health Sub-Recipient Agreement was made. Motion to approve made by Hartman; seconded by Linde; vote taken, all aye; motion carried.

**N. Public Comment – None**

**O. Old Business**

1. Commission Legal Counsel, Aaron Davis, presented Resolution 2023-19—Resolution Dedicating a Non-Exclusive Easement for National Forest Right-of-Way Purposes re: Tract Price of HES 469, located in the NW1/4 of Section 3, T4S, R4E, BHM, Custer County, South Dakota. Davis noted this is one of the many steps necessary for the airport land purchase. This resolution provides a dedicated ROW from Custer County to USFS for land access. He has spoken with the USFS land use office to work toward drawing up a resolution for easement and this is a first step. Currently, appraisal work is being conducted and necessary to move forward. Davis recommended approval of Resolution 2023-19. Highway Superintendent, Jesse Doyle, inquired if the easement would contain a maintenance agreement clause, so that Custer County does not have to perform maintenance on the easement. Motion to approve and have Chairman sign made by Linde; seconded by Busskohl; vote taken, all aye; motion carried.

**P. Commission**

- 1. Mail call –
  - a) Thank you card from the family of Jim Kor was received.
- 2. Request to surplus outdated Commissioner iPads (5) was made. Previous iPads have been surplussed at a price of \$50/each. Motion to approve made by Hindle; seconded by Linde; vote taken, all aye; motion carried.
- 3. Meeting Schedule -- None
- 4. Meeting Reports – Lintz attended fire service meeting 10-9-23 @ Custer Fire Dept; Hindle attended Library Board meeting; Chamber awards banquet. Busskohl attended YMCA meeting and participated in the Merchant Trick-or-Treating. Also noted was an invite to Golden West Telecommunications to attend future Commission meetings; Heberly to convey invitation to contractors, as well.

**Q. Human Resources**

1. Executive Session as per SDCL 1-25-21(1) Personnel; Wage Study entered into at 9:24 AM and concluded at 10:40 AM with no outside action taken.

**R. Commission Legal Counsel**

1. Executive Session as per SDCL 1-25-2(3) Legal entered into at 9:24 AM and concluded at 10:40 AM with no outside action taken.

**S. Adjourn**

Motion by Linde and seconded by Busskohl to adjourn the meeting at 10:41 AM. The next meeting will be at 8:00 AM, November 15, 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 \_\_\_\_\_.