

Commission Meeting Minutes; Park County, Montana
Week of September 22 – 26, 2008

September 22, 2008

Status of South Fork of Deep Creek Road

@9:03:26 a.m., Chairman Lahren called a meeting to order in the Commissioners Chambers. Commissioners Denton and Durgan were not present due to their attendance at a Montana Association of Counties conference in Hamilton. Present was Ed Hillman, road supervisor; Shannan Piccolo, deputy county attorney; Bill Hurley, operations; Jerry Brekke, historian; Mark York, Livingston Enterprise; Public Citizens Mindy Thigpen, Donna Greenberg, Michele Strong, Joe Swindlehurst, Bob Peterson, Alston Chase, Leonard Kovar, Roberta Kovar, Pat Wagman, Marla Wagman, Bill Williams, Jim Strong, Merle Abbott, H.E. Setzer, and Joy Larsen-McEvans; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss the status of the South Fork Deep Creek Road.

Park County Historian Jerry Brekke provided Commissioner Lahren and meeting attendees with a research report on the status of South Fork of Deep Creek Road as a county road. The report was entitled, *South Fork of Deep Creek Road in Park County, Montana Located in Section 36, Township 3 South, Range 9 East; Section 1, Township 4 South, Range 9 East; Section 31, Township 3 South, Range 10 East; and Section 6, Township 4 South, Range 10 East, P.M.M.* Lahren read into the record the conclusion section of the report, which states in part, “In summary, no creating documentation or commissioner acceptance has been found for the South Fork of Deep Creek Road. The road appears on undated county road plat maps, and according to a surveyor’s note on S/D 362, the road was surveyed by the county as a 40-foot wide lane in 1923. Several survey certificates and subdivision plats have been filed indicating a 60-foot statutory county right-of-way for the roadway.”

Deputy County Attorney Shannan Piccolo provided a legal opinion of the road’s status as a county road, as well.

Lahren said South Fork of Deep Creek Road is a public road and not a county road. He said a formal petition process must be followed for the road to become a county road. He said a second option for residents is to maintain the road as needed with a contractor through a homeowner’s association. Lahren said the South Fork of Deep Creek Road status situation is a clone of a Suce Creek Road status situation. Lahren said the exact same problem was encountered by residents there and the exact same procedure will need to be followed to change the road’s status. Lahren said he recommends the residents talk to citizens on Suce Creek Road about their experience if possible.

Alston Chase asked whether records may be found determining the road is a county road and asked if the burden of proof of finding that information falls on the citizens.

Brekke said he is 85 percent to 90 percent sure of his status findings of South Fork of Deep Creek Road based on his exhaustion of records and the procedure he used. He said he usually finds text within Commissioners Proceedings if a road was ever declared a county road. Lahren said Brekke would assist the citizens in further research of the road's status if desired.

Chase said the road serves a Forest Service trailhead and thus is becoming heavily used by the public. He asked if the residents on the road can close the road since it is not a county road. Lahren said the road could not be closed because it is a public road. He said at this time it is not the county's responsibility for maintaining the road because it is not a county road.

Chase said he received oral assurance from the county commissioners in the early 1980s that South Fork of Deep Creek Road was a county road when he bought his property. He said he has text from Surveyor Tom Hallin in 1981 the road is a county road.

Lahren said Tom Hallin wrote on November 21, 2000 referencing Deep Creek Road-South Fork, "Park County has no known petitions for opening this road or approval in the Commissioner's Proceedings." Chase said he has a document in his possession at the meeting from Tom Hallin saying Hallin thinks the road is a county road.

Donna Greenberg said she owns two houses on South Fork of Deep Creek Road and her plat maps were approved by the county and the road is designated a county road on those plats. She asked how that could be the case. Lahren said it was the same thing that happened on Suce Creek with residents having plats saying the road was a county road, that designation being made through an assumption by a surveyor and title company. Greenberg said each person in the room represents an expenditure of a home and property and trust of papers signed. She said she signed paperwork from the county when she bought her house. She said what the citizens are now being told is invalidating a lot of money spent. Lahren said that comes back on the title company, which is supposed to go through records Brekke goes through before making plat maps and assuming a road is a county road.

Lahren said the residents need a legal opinion to argue why the road is a county road. Chase said the residents are going to obtain a legal opinion.

Michele Strong said the county has been collecting taxes and fees to tie into the county road from residents living on South Fork of Deep Creek. She said it would be more costly in the long run for the county to lose that tax revenue, so it should maintain the road until it is proven it is not a county road since the county has been maintaining the road for more than 20 years. Lahren said that issue is a legal issue.

County Road Supervisor Ed Hillman said he was told last spring South Fork of Deep Creek Road was not a county road. Brekke said to Hillman the March report focused on the status of Deep Creek Bench Road as a county road. Brekke said in that report he

declared the south road a Forest Service Access road. Brekke said to Hillman he told him in the spring he found no county ownership records of the south road at that time.

Chase asked who owns the property at the end of citizens' driveways if the road is not a county road. He said his plat shows 7.1 acres reserved for a county right-of-way at the south end of his property.

Joe Swindlehurst asked if the county is systematically throughout the county researching whether roads are county roads. Lahren said the county is doing that as both part of a liability question and to save money. Lahren said the county is overwhelmed with county road maintenance and faces more challenges with potential federal cuts to PILT funding. He said the county does not want to be maintaining private roads. Lahren said adjacent counties are having the same issues, and Beaverhead County cut its road foreman position to save funds. Lahren said the county is not trying to leave the residents hanging out there, but it needs to get the road status situation straight so everyone is on the same page.

Bob Peterson asked when the county started raising up and grading non-artery roads. Lahren said that started in the late 50s or 60s and graveling of roads began in the 50s. Lahren said citizens would work on roads at that time in lieu of taxes.

Greenberg said she signed agreements when subdividing property on South Fork of Deep Creek Road which address public health and safety. She said the agreements state in part that Deep Creek Road South-Fork is a county road and road maintenance is the responsibility of Park County. Greenberg asked why the onus of this is being put on the citizens. Lahren said the current Commission inherited the assumption the road was a county road.

Chase said one issue at hand is a legal issue and one is a fairness issue. He said the legal issue may take time, but from a fairness issue he is very troubled by the fact residents just learned about this issue within the last week. He said residents on the road have no time to prepare for or adjust their lives for coming winter weather. He said the grass along the road is high and bad drifting will result with snowfall. He said many residents on the road are in their 70s or 80s and have health issues. He said the fact the county has decided not to maintain the road until the legal issue is resolved puts the citizens at risk and in fairness the road should be maintained until the dispute is resolved. He asked what liability the county assumes with not maintaining the road.

Lahren said he is in agreement and will check with legal counsel to see what the county's risk is if it maintains the road while the legal issue is resolved. Lahren said the county maintained Suce Creek until the road research process was finalized for that road. Lahren said he will contact Chase about his findings no later than Thursday.

Swindlehurst asked why the county took down road name signs on Lower Deep Creek Bench Road. Lahren said the county did not take down the signs and those signs are often stolen. Swindlehurst asked the difference between green and blue road name signs.

Hillman said blue signs denote private or public roads and green signs denote county roads.

A citizen asked why the current Commission has adopted a new policy change if roads were never adopted as county roads in the past but the commissioners continued to maintain the roads. He asked why the Commission is making current residents hire their own attorney and putting them in an adversarial position with the Commission. He said the Commission should have its legal people drop the paperwork and have a public meeting and adopt South Fork of Deep Creek Road as a county road.

Lahren said the policy changed because it had been done illegally before. He said it is not a policy change but a procedural change because county roads need to be established through a due process. Lahren said the Commission is not trying to headhunt, but it is trying to determine legal county roads and what is supposed to be maintained. Lahren said the same situation happened with Suce Creek Road and the county cannot just go by what has always been done. He said a survey must be conducted and public hearings must be held.

Chase said a prescriptive right of usage would establish South Fork of Deep Creek as a county road. He said Tom Hallin said in 1981 the road had been accepted by the county for so many years it is a public road. Chase said his title insurance has the county easement reserved for the county and said it is a 60-foot width with a detailed description of its route. Shannan Piccolo said a prescriptive easement must be court-ordered and she feels South Fork of Deep Creek Road likely would be determined a prescriptive easement in court based on decades of use. Piccolo said a road easement does not convey ownership, but it conveys right of use. She said an easement can be done for a public road as well as a county road.

Mindy Thigpen said she has a gas tax map that shows South Fork of Deep Creek Road has been generating tax monies. Lahren said any road in the county used by the public earns gas tax monies. Thigpen said the Commission has adopted a no new county road policy. Lahren said pre-existing public roads are considered. He said the Commission's philosophy is not to accept county road petitions for a road that serves a few houses way up in the mountains. Thigpen asked why the county would survey the road if the road wasn't to be a county road. Lahren said the first step in the process is to survey the road. Brekke said several roads are proposed roads and field notes exist on those, but that does not mean it went through the entire process and was declared a county road.

Swindlehurst said clearly there has been a common-law dedication of the road as a public road. Swindlehurst said there is no difference between a county road and a public road. He said a county surveyor surveyed the road. Lahren said a public road is not necessarily a county road.

A citizen asked what process the residents need to follow to push for a county road. Lahren said the road must be surveyed, which is to be paid by the citizens, a 60-foot wide center stake must be established, a plat map created, and a petition submitted. Lahren

said the road must then be viewed by the Commission and a public hearing process held. The citizen asked what her tax dollars go for and why must the citizens pay for the survey. She asked why the Commission cannot take action with citizen tax dollars to correct the issue.

@10:04:47 a.m., Lahren adjourned the meeting.

September 22, 2008

8:00 A.M. – 5:00 P.M. – Montana Association of Counties Conference – Hamilton – Commissioners Denton and Durgan attending

September 23, 2008

8:00 A.M. – 5:00 P.M. – Montana Association of Counties Conference – Hamilton – Commissioners Denton and Durgan attending

12:00 P.M. – Airport Meeting – Clark’s Crossing

6:30 P.M. – Park County Fair Board Meeting - Fairgrounds

September 24, 2008

8:00 A.M. – 5:00 P.M. – Montana Association of Counties Conference – Hamilton – Commissioners Denton and Durgan attended

September 25, 2008

Park County Road Updates Meeting

@8:00:23 a.m., Chairman Lahren called a meeting to order in the Commissioners Chambers. Commissioners Denton, Durgan and Lahren were present. Also present was Ed Hillman, road supervisor; Shannan Piccolo, deputy county attorney; Public Citizens Dan Dinsdale, Warren Latvala, Jim Taylor, and Bob Peterson; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss county road issues.

Commissioner Lahren said school bus driver George Smith said kids in wheelchairs need to get on the school bus on Miller Drive and the bridge on that road needs to be fixed in order to permit safe travel. Hillman said he needs to put a steel top on that bridge and needs permission from the Commission to do the work. Hillman estimated it may cost \$2,500 to fix it. Lahren said the bridge needs to be a top priority. The Commission authorized Hillman to fix the Miller Drive Bridge post-haste.

Referencing the Deep Creek Bridge, Lahren said he wanted to enter the following chronology into the record.

Lahren said the Commission directed the road supervisor on August 18, 2008 to do the work on the Deep Creek Bridge and on August 19 it directed him to have a survey and permits before work commenced. Lahren said the survey was not completed by the road foreman per instruction and Lahren had to have that survey completed after the fact. He said the Billings office of the Army Corps of Engineers did not receive the permit application from Hillman until September 1 and it apparently languished in that office and Hillman said he called there and they said it was probably in an unopened envelope. Lahren said on September 11 he called Gene Ramer of the Corps in Helena who advised him Hillman had faxed in an application on September 9. He said Ramer faxed him a copy of the permit on September 11 so it was not until that time that any work on the bridge could be started.

Hillman said he does not want to continue Bailey bridge inspections because of personal liability concerns. He said he and Road Crewman Winn Treible are not trained to inspect the bridge. Lahren said the inspections are now bi-weekly to determine if the bridge is maintaining its structural integrity. Hillman said he would like a legal opinion on the liability matter. The Commission said it will check with the county attorney's office.

Lahren said to Hillman the Commission has been advised as a county employee Hillman directed the illegal dumping of road asphalt and other materials at the Refuse District #1 landfill borrow pit location on September 15, 2008 in an area where landfill cover material is obtained. Lahren said the actions put Park County at risk and said Hillman is to coordinate with the landfill manager to remove all of the materials placed in that area so it can be weighed, paid for and placed in the proper landfill location.

The Commission signed the directive for Hillman to remove the material and submitted it to Hillman for signature. Hillman signed the directive.

Durgan asked where the asphalt came from. Hillman said he told the road crew to dump it there because he thought it was gravel and dirt. Lahren said Hillman needs to go through the landfill supervisor for dumping activities because the landfill is an enterprise system and dumping incorrect materials causes the county compliance issues with the Montana Department of Environmental Quality.

Deputy County Attorney Shannan Piccolo said she is waiting to hear from MACO about the county's liability of maintaining Deep Creek South Road. She said she hopes to hear something from MACO by the first part of next week.

Hillman said he continues to receive citizen complaints about the poor condition of pavement on Willow Creek Road. He said it would cost \$7,200 for IronWolf to turn the one mile of Willow Creek Road back to gravel and IronWolf can be here on Tuesday to do the work. Hillman said the work would be done the same as the Five-Acre Tracts, and residents on Willow Creek Road will be notified millings will be put back on that road in Summer 2009.

Lahren made a motion to contract with IronWolf to chew up Willow Creek Road on Tuesday. Denton seconded that motion. Motion passed.

Hillman said he thinks if he notifies Richard Dysart of Willow Creek Road the word about the work will be spread. Lahren said the road is not being permanently turned into a gravel road and to make sure residents know this is the first phase of the road reconstruction and millings will go on next year during warm weather.

Hillman said the road crew put new running planks on the upper bridge on Six Mile Bridge on September 23.

Lahren said Pete Clark will be cutting bridge plank in the Whispering Pines area in October and they will be available then for county use

Public comment was made by Jim Taylor. Taylor asked if citizens paid for the blacktop on Willow Creek Road. Durgan said he understood \$9,000 of residents' money went to start that project. Taylor said if people used their money they need to be notified of the Commission's plan before the road is chewed up to avoid the upheaval of residents that occurred from the Five Acre Tracts work.

Public comment was made by Warren Latvala. Latvala asked if the state gave the county a checklist of items to inspect on the Bailey bridge. Lahren said the Montana Department of Transportation provided such a list, which includes checking tightness of bolts and chains. Lahren said the bridge has not moved since it was erected. Latvala said the county road foreman or crew should not have to worry about personal liability issues since the state provided an inspection list.

@8:23:51 a.m., Durgan made a motion to adjourn the meeting. Lahren seconded that motion. The meeting was adjourned.

September 25, 2008

Review of Correspondence, Public Contacts and Determine Action Plan

@8:47:54 a.m., Chairman Lahren called a meeting to order in the Commissioners Chambers. Commissioners Denton, Durgan and Lahren were present. Also present was Bill Hurley, operations and Commission Minutes Clerk John Mueller. No public comment was made.

The meeting was scheduled to review correspondence, public contacts and determine action plans.

Commissioner Denton asked about the status of Bannack Trail research and whether County Historian Jerry Brekke has any information on that road she can take to Cooke City on September 26. Lahren said Brekke has been tied up with other road research and hasn't yet finished his research of Bannack Trail.

Lahren telephoned a resident in the Whispering Pines area about a road maintenance issue there. Lahren said Road Crewman Skip Ehert was sent there to blade the road from Allers to the Two Mile Bridge, but Ehert went north into Sweetgrass County and turned boulders up in the road and left them. Lahren said area residents called the Commission to complain about the road condition. Lahren said the Commission will have a problem working in another county due to liability and it may be a good idea to outsource work there to a Big Timber firm due to its distant location. Lahren said he will contact the Sweetgrass County Commission and will price the outsourcing of that road work.

The Commission reviewed its ACTION ITEMS file.

Correspondence included:

- Cooke City snow blading contract. Denton said language about additional county road work was added to the contract. The Commission signed and filed the contract.
- Stafford Animal Shelter invoice - The Commission signed off on the invoice
- Memo from undersheriff to GIS/IT manager re. DC02 disc space
- Memo from Ed Hillman re. no longer will conduct inspections on the Bailey bridge due to liability concerns – Lahren said the memo has gone to the County Attorney's office
- Memo re. Water Trust board meeting - To Durgan for review
- Memo from Steve Phillips asking when the Commission will hold another Bailey bridge status meeting
- Memo re. Big Creek Road - To Durgan for review
- Weekly road crew work schedule - To Road Book
- Memo from Jay Aultoff re. O'Rea Creek crossing project supposed to be completed by county road supervisor. Lahren said MDT wanted the project completed this fall. Lahren said he is recusing himself from the issue. He said the file contains specifications of how that work was to be completed - To Hurley, Denton and Durgan for review and action.
- Citizen letter re. poor road conditions and requesting road maintenance in the Great Escape Subdivision in Wilsall
- Lahren updated Denton and Durgan about the status of the South Fork of Deep Creek Road as a county road and a public meeting held on that issue on September 22. Lahren said no data exists showing that road as a county road. He said he thinks the easiest solution may be to have the county GIS manager GPS the road from its center instead of conducting a full blown survey, adopt the road by resolution, and maintain the road per the county road maintenance schedule. Lahren said he is checking with the county attorney's office on the county's liability of maintaining the road in the meantime. Durgan said the county must be careful to avoid maintaining lateral roads if the road is adopted as a county road.
- Invoice from Bob Fry. Lahren said the legislature has made the county fire warden a paid position.
- Myer's Flat status report
- Memo from GIS/IT manager re. new county website software

- Memo re. Upper Yellowstone Watershed Basin - To Durgan for review
- Yellowstone/Teton Clean Energy Coalition
- Memo re. mental health advocacy - To Denton for review
- Memo re. JSEC Labor Day annual report for Montana - To Denton for review
- Memo from Kim Knutson of Park County Fair re. installing frost free hydrants and piping to barns rusting through and requesting \$960 to fix pipes. She said the fair board will provide heavy equipment labor. Durgan said the work needs to be budgeted for in the '09 budget.
- Citizen Thank You card to Commission for Chicory Road work – To Road Book
- Memo re. wind power - To Durgan for review
- Memo re. Upper Yellowstone Mill Creek Committee - To Durgan for review
- Request for bond release of sprinkler system re. Richard Wright property on IbeX
- Memo re. Livingston Senior Citizens Center rehab project - To Hurley for review
- Citizen comments re. City of Livingston DEQ Class II transfer station construction - To file and Solid Waste Board
- Memo from architect re. status of rabbit and poultry barn construction - To file
- Memo re. PILT update - To Durgan for review
- Memo re. opening of Deep Creek Bridge on Sept. 18 - To Road Book
- Memo re. state conference on mental illness - To Denton for review
- Minutes from airport board meeting - To Durgan for review
- Memo from MACO re. lodging rates - To finance department
- Memo from Dann Babcox re. comment on Deep Creek Bridge repair - To Road Book
- Memo re. Cooke City resort tax addendum - To file
- Memo re. Traci Islay will be back to the planning board after an absence
- Invoice from Al Vietz re. refuse tags - To Richard Wright for review
- Motion for costs of \$2,100 by Mark Hartwig for writ of mandamus he filed re. Deep Creek Bridge work - To Deputy Attorney Piccolo for review
- Notice of stalking from Livingston Police Department dated September 19, 2008 declaring Lani Hartung is not to stalk Polly Miller

@10:00:40 a.m., Durgan made a motion to adjourn the meeting. Denton seconded that motion. The meeting was adjourned.

September 25, 2008

9:30 A.M. – Review Claims - Commissioners Chambers

September 25, 2008

Addendum to Cooke City Resort Tax Contract

@10:10:22 a.m., Chairman Lahren called a meeting to order in the Commissioners Chambers. Commissioners Denton, Durgan and Lahren were present. Also present was Sarah Hamlen, Northern Rocky Mountain RC&D; Bev Chatlain, Cooke City resident; Shannan Piccolo, deputy county attorney; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to consider an addendum to a Cooke City resort tax contract.

Deputy County Attorney Shannan Piccolo presented the Commission with an amendment to the Cooke City resort tax submitted to the resort tax committee's attorney. Piccolo said the amendment will permit to rolling of Fiscal Year 2007 resort tax money allocated to the Shoofly Community Center into a capital improvement fund for use in the future.

Commissioner Durgan asked if the amendment action will affect any other Cooke City resort tax requests. Sarah Hamlen said it would not because the money has already been approved. Hamlen said the money is being rolled into the next fiscal year because construction was slated to begin this summer but did not.

Piccolo corrected the application dollar amount on the amended contract from \$180,000.00 to the \$193,216.70 appropriated amount.

Durgan made a motion to accept the amendment. Denton seconded that motion. Motion passed.

The Commission signed the contract amendment.

@10:26:38 a.m., Durgan made a motion to adjourn the meeting. Denton seconded that motion. The meeting was adjourned.

September 25, 2008
Fiscal Year 2009 Budget

@10:47:26 a.m., Chairman Lahren called a meeting to order in the Commissioners Chambers. Commissioners Denton, Durgan and Lahren were present. Also present was Marilyn Hartley, accounting and Bill Hurley, operations. No public comment was made.

The meeting was scheduled as a Fiscal Year '09 budget workshop.

@11:58:04 a.m., Lahren recessed the meeting for lunch. @2:16:59 p.m., Lahren reopened the meeting.

@3:50:50 Lahren adjourned the meeting.

September 26, 2008

No Meetings Scheduled

10:30 A.M. – 12:00 P.M. – Commissioner Denton in Cooke City

2:00 P.M. – 3:00 P.M. – Commissioner Denton in Gardiner

Larry A. Lahren
Chairman, Park County Commission
Park County, Montana

Denise Nelson
Clerk & Recorder
Park County, Montana