

STILLWATER COUNTY COMMISSIONERS MINUTES

Notice: These minutes reflect the proceedings of the Board of County Commissioners. The official minutes are on file with the Clerk and Recorder (MCA 7-4-2611(2)(b)).

REGULAR MEETING JANUARY 5, 2016

Present: Commissioners Dennis Shupak, Chair; and Gerald W. Dell, Member; and Lori Dobitz, Administrative Assistant. Others Present: Nancy Rohde, County Attorney; Tom and Karen Heyneman; Dan Burkhart; Alex Heyneman; Richard and Virginia Cross; Heidi Stadel, Clerk & Recorder; and Rick Hanners, Stillwater County News. Absent: Commissioner Maureen Davey is attending the National Council of County Association Executives, State Association Presidents and Executives Directors Meeting in Washington DC, January 6-8, 2016.

Open Meeting: Commissioner Shupak opened the meeting at 9:00 am with the pledge to the flag.

Public Comments: No comments were heard.

Minutes Approval: Commissioner Dell **MOVED** to approve the minutes of the Regular Agenda Meeting of November 3, 2015. Commissioner Shupak **SECONDED**. Motion passed.

Special Issues: Stillwater River Road Rockslide: Commissioner Dell reported the commission has set a conference call for January 13, 2016, at 9:00 AM with Shannon & Wilson to go over their proposal and recommendations. He said the personnel on the Rockslide Committee, County Attorney; County Sheriff; DES; Road & Bridge Superintendent; and Commissioners, will be on that conference call.

Regular Business: **Road Department**

a. West Rosebud Creek Road - Commissioner Dell said the commission received a proposal from our on-call engineering firm, Great West Engineering, to conduct rights-of-way acquisitions on approximately four locations on the West Rosebud Road. This project is designated for reconstruction in May or June 2016. He said the estimated total amount of \$45,000 can not be exceeded without the commissioners written approval.

Commissioner Dell **MOVED** to approve the Great West Engineering Task Order No. 12 (rights-of-way acquisition) to agreement for professional services in the amount not to exceed \$45,000. Commissioner Shupak **SECONDED**. Motion passed.

b. Petition - regarding county clear-cutting in county rights-of way. Nancy Rohde, County Attorney, addressed the Commission stating on December 14, 2015, the Board received a petition from county citizens that were concerned about the road maintenance that was being done on

Fiddler Creek Road and the board has asked her to respond to that petition. She has done so in a form of a letter and summarized its content.

Discussion: Commissioner Dell said the commission received an email on Monday, January 4, 2016, from one of the petitioners asking if there would be time for public comments. Commissioner Dell stated there will be times for public comments and he would suggest that they submitted in written form so they can be attached to the minutes or incorporated into the minutes so there is no misunderstanding of what was said.

Public Comments: Commissioner Dell asked if there are public comments at this time.

Richard Cross asked Nancy Rohde about right-of-way width. He said he understands it is 60 feet but it is complicated. He said on that piece of road from Ingersoll Road turn off all the way to Nye Road is a prescriptive easement, is that correct? Rhode responded no, that is not correct, it is a petitioned county road. He asked what happens if the clear cutting is happening outside the 60 feet. She said he would have to contact a civil lawyer, she can not advise him as the public, as to what would happen. He asked, does that mean trees are being cut on private property. Rhode said if it is outside the 60 feet that's what that would mean. Commissioner Dell said we went from fence line to fence line. Cross said the fence line at some points are 150 feet. Commissioner Shupak said the 60 feet is on the level.

A question was asked if the clear cutting was going to take place on the West Rosebud Road. Rhode said our county maintenance is going to continue on all county roads within our rights-of-way.

Karen Heyneman asked if the 60 foot right-of-way is measured from the centerline with 30 foot on each side. **Nancy Rohde** responded saying she could not give her a yes or no answer, the Road Department would be better asked that then her. Heyneman said it then could vary from one side of the road 60 feet and the other side of the road 60 feet at the county roads departments discretion. Rohde said no, it will not be at their discretion. Commissioner Dell said the county stays fence to fence. If the fence is out of right-of-way, that is up to the landowner, he said. Nancy Rohde addressed the fence to fence language. She said in some areas where the fence line is outside of 60 feet, at one point in time, there was a portion of that road that was a State road. The state has 120 feet right-of-way and they deeded that to the county, she said, and our right-of-way is 60 feet. The road crew has been and will continue to be instructed that they are going to maintain our rights-of-ways within the 60 feet, Rohde said. Now sometimes that 60 feet, you can eyeball it, and maybe a couple of feet here and there, whatever, that is where they are going to go, she said. When they say they are using the fence line to measure, that is a general thing. I don't want them cutting outside of 60 feet, and they have been told that numerous times, Rohde said. But are we going to take a 10 foot section and measure all that out to make sure we are in 60 feet, no we are not going to do that, she said, we are going to eyeball it. If it looks like an area that needs to be marked, then we can mark it an go back in and measure it before they do anything.

Richard Cross said in the particular place that got people upset which was a rise with a line of beautiful trees, we went up there and measured it and they cut 10 feet either side of the 60 foot right-of-way if you measure from the middle of the road. If the statute that says the board has complete control over the level and scope of all maintenance, and the citizens have no input on that whatsoever, if that is correct, then you can bulldoze all you like within the 60 feet, but we can fight

tooth and nail to stop it outside of the 60 feet. We are not saying don't cut trees where it is icing or don't do sight lines, we are saying you don't need to bulldoze everything out of the road. Discussions continued between the County Attorney and Mr. Cross regarding public hearings and public meetings, agenda meetings and statutory authority.

Karen Heyneman - asked if the county was going to proceed with the project. **Commissioner Dell** said it was his understanding they are out working this morning. They are on Countryman Creek doing the same thing, which we have done in the past.

Virginia Cross - asked if fence line to fence line was going to be held as a way measuring this clear cutting. **Nancy Rohde** said she and the Road Superintendent are going to discuss how he is going to measure that, stating fence line to fence line is too broad of a term. I don't want that term to continue to be out there so there isn't misunderstandings about whether we are talking about 100 foot fence lines, so we need to not be utilizing that term. **Karen Heyneman** asked that the county adhere to the 60 foot.

Alex Heyneman asked if it was possible for the landowners to flag areas that they are concerned about to have as a discussion point with the road crew and the commission. We can personally flag what we see is the 60 feet, is there consideration on that? **Nancy Rohde** said she thought that would be good, then they (road crews) are not guessing, but ultimately it is the commission that has to make a decision, with the Road Superintendent at their direction.

Commissioner Shupak said something that a lot of people don't understand is if you go out 30 foot flat and you go up 20 feet, the bank is 20 feet high, the slope will be 40 foot long. He said as a previous fence contractor, there are a lot of places where it was 120 feet to the road, but he was still only 30 feet away from the center of the road.

Richard Cross asked why the commissioners have chosen clear cutting rather than use discretion. Commissioner Dell said for safety and other reasons pointed out by the County Attorney in her letter. Nancy Rohde said she only referenced a few standards and there are many levels of those standards. It was asked of Nancy Rohde if the county can meet those standards of safety without having to clear cut. She said we don't need to get into what is clear cut and what's not clear cutting. I think the road crew would say they are not clear cutting, Rohde said. She thinks what was said earlier, If you want to flag areas that you are concerned about, the road crew will go out and look. That way you are having an open communication about what trees should or should not be down. But know that the final decision, within the 60 foot right-of-way on this particular road will lie with them (Road Department) and if they decide they are going to take them down, then that is what is going to happen, Rhode said.

Commissioner Dell said in regards to a meeting with the Commissioners, he invited those present to contact the Commissioners Administrative Assistant to schedule a time.

Other comments - A question regarding the height of the stumps was made. Commissioner Shupak said the stumps will be removed. A question was asked when the last time this type of work was done on these particular roads. Commissioner Dell said he was not sure about this road, but a report printed from the Road Department showed from 2008-2015 fifty-five county roads have had this type of work done. Soil erosion and stump removal were discussed.

Dan Burkhardt - asked “since this has been an ongoing thing and the county has not allocated any more money to make this a priority then you have in the past?” Commissioner Dell said no. Dan asked “if it was there all along, then why has it not been done in decades?” **Commissioner Dell** said it has been on going throughout the county, it just so happens that Fiddler Creek was picked this time, as was the far end of Fiddler Creek also. Burkhardt asked if there are records of accidents on the road, because in the 15-years he has been driving it he has not seen any. Commissioner Dell said he can’t answer that, but the Sheriff’s office would have records. Burkhardt asked where the lumber is going? Commissioner Dell said some of it was being hauled off and burned and Commissioner Shupak said some was cut-up and people have been picking it up.

Karen Heyneman asked Rohde what she would suggest be the recourse for cutting done on private property on Fiddler Creek Road. Nancy Rohde said she can not answer that because that would be giving advice to a private citizen which she can not do out of her office. Richard Cross stated some of those properties are on a conservation easement so we have that to look into also.

File Items: Treasurer’s Office - Cash and Investments totaled \$36,833.068.67 for the month ending November 30, 2015.

Commissioner Dell **MOVED** to place the file item to file. Commissioner Shupak **SECONDED**. Motion passed unanimously.

Meeting Adjourned: Hearing no further business, Commissioner Shupak adjourned the meeting.