

**JULY 10, 2006 THE 2<sup>ND</sup> DAY  
OF THE JULY ADJOURN TERM**

The County Commission met in the Associate Circuit Courtroom II at 9:00 a.m. pursuant to adjourn with Chuck Pennel, Presiding, Ron Herschend, Western District, and Danny Strahan, Eastern District present. The following proceedings were had and made a matter of record.

The prayer was led by Chuck Pennel followed by the pledge.

**DAM VIEW ROAD  
STEVE DUNN**

Steve Dunn, with the Missouri Department of Transportation (MODOT), addressed the Taney County Commission in regards to Dam View Road. Mr. Dunn explained that this is the road the county acquisitioned by the hatchery. Dunn presented the Commission with a map and shared that they have received several complaints in regards to people going onto the right-of-way, dumping, and shooting fireworks. Dunn then suggested putting up “no outlet” or “dead end” signs and barricading the roads with concrete barricades across the end of the Grand Avenue, Elizabeth, and Plaza to let people know that it is shut off until MODOT connects up to Dam View Road. Dunn reiterated that they have had several phone calls about the area and MODOT has already purchased the right-of-way, but has not done anything with it.

Commissioner Herschend asked who would pick up the trash that is currently down there and suggested letting MODOT place appropriate articles at the county transfer station, without charge. Commissioner Strahan asked if MODOT would be building a turnaround or cul-de-sac and Presiding Commissioner Pennel questioned how maintenance would work if the county needed to chip and seal the roads? Dunn responded that MODOT would be picking up the trash, but would not be building a turnaround or cul-de-sac, which is why he suggested the “No Outlet” or “Dead End” signs. Dunn further explained that the county would only need to give him 24 hours notice to have the concrete barricades out of the way. Dunn added that they would let property owners know what MODOT is doing.

Commissioner Herschend made a motion to approve the Missouri Department of Transportation to clean up the material, bringing it to the transfer station at no cost, and to allow them to barricade the five streets indicated, along with signage at their discretion. Commissioner Pennel seconded the motion. The motion passed by a vote: Pennel (yes), Herschend (yes), and Strahan (yes).

Commissioner Herschend expressed his appreciation to MODOT for letting the Commission know about their plans.

**NATIONAL DAY OF THE COWBOY  
JOE HREHA**

Joe Hreha requested a proclamation from the Taney County Commission recognizing the National Day of the Cowboy Organization. Hreha explained that it is a nonprofit organization, whose purpose is to set aside a date to pay homage to the countries cowboy and western heritage, as well as to honor working cowboy/cowgirls, rodeo athletes, western musicians, cowboy poets, western artists, rangers, and others who continue to contribute to the cowboy and western culture in America today. Hreha added that Taney County would be the first jurisdiction in the State of Missouri to adopt a proclamation and that the National Day of the Cowboy is generally the third Saturday in July each year. Hreha clarified for Bob Paulson that the proclamation would recognize the day, rather than the organization.

Commissioner Herschend made a motion to approve a proclamation recognizing a day set aside to honor the countries western heritage and cowboys/cowgirls. Commissioner Strahan seconded the motion. The motion passed by a vote: Pennel (yes), Herschend (yes), and Strahan (yes).

### **CONTRACT APPROVAL FOR REHABILITATION OF PUMP STATION JOHN SOUTEE**

John Soutee, Sewer Department presented contract documents in regards to rehabilitation of lift station number four, which was adopted by the sewer district in 1995 to service Riverside Acres. Soutee explained that it is worn out and he went out for bid proposals approximately one and one-half months ago. Soutee stated that Victor Rosetta, with Rosetta Construction was the only bid received at \$64,000. Soutee added that the rehabilitation would include taking everything out of the pump station, including guard rails, electronics, the pumps (which are worn out), and installing new pumps, guard rails, and other parts, along with addressing other issues involved. Soutee further explained that the pump station serves about one hundred homes and one pump is running almost twenty hours a day, while that other pump is running about sixteen hours a day. Soutee clarified that the pump should only be running about two and a half to five hours a day and that he sees the station as a liability.

Commissioner Strahan asked if all one hundred homes are in Taney County, or if some of them lie in Branson? Soutee confirmed that all of them are located in the county.

Commissioner Herschend asked what the county would do while its being repaired? Soutee responded that it would take one and a half to two days and that because it is a gravity sewer, pump trucks would be necessary to pump out of the manholes. Soutee added that all of those details are in the contract and the Sewer Department has been monitoring the community's use in order to best plan the repairs.

Commissioner Herschend asked if the county would contact the neighbors. Soutee replied that they have contacted property owners about the pump station and after they acquire all of the signed documents, they would sit down with Mr. Rosetta, get a time frame, and then do a mailing to help keep water usage to a minimum on those days.

Commissioner Herschend then asked, from a safety standpoint, if the county would require the workers to wear oxygen masks? Soutee answered that they have been advised in the past not to dictate safety responsibilities, but to make recommendations only. Soutee added that Mr. Rosetta would be running his crew and would be responsible for their safety.

Commissioner Herschend suggested amending the contract to require that the contractor abide by Occupational Safety and Health Administration (OSHA) regulations, and asked Bob Paulson to look into those requirements. Herschend added that Mr. Rosetta did an excellent job for the county while he was with Journagan, but that he no longer works with them, and asked Soutee if he had concerns? Soutee informed the Commission that Mr. Rosetta has done other work for the county, as well as other communities, and he believes that the quality of his work is good, plus he is very knowledgeable.

Presiding Commissioner Pennel asked Soutee if Planning and Zoning has other approved projects that would affect this station, and if so could the station handle additional projects? Soutee told the Commission that currently there are no other projects for this station and that there are only a few lots left in that area. Soutee added that the station has the capacity for other projects if necessary.

Commissioner Herschend made a motion to approve the contract as submitted by Mr. Soutee. Commissioner Pennel seconded the motion. The motion passed by a vote of three; Pennel (yes), Herschend (yes), and Strahan (yes).

The Commission requested that Bob Paulson, County Counselor report to them in regards to what they can ask as to safety concerns.

### **RESPONSE TO RON HERSCHEND**

James Strahan, Assessor expressed that last week a statute was read concerning the responsibilities of the Assessor and County Clerk regarding merchants and manufacturing. Commissioner Herschend clarified that it is also the Commission's responsibility. James Strahan expressed that the state is manufacturing statutes that should have been repealed because they were amended by the constitution in 1982. Strahan added that he wasn't sure why the statute was brought up and wanted to share the response from the Missouri State Tax Commission (MSTC)

Commissioner Herschend read the following excerpts, which were also from Randy Turley of the MSTC, in response to the Assessor's request: "These statutes are confusing remnants of an assessment system which existed prior to the exemption of merchants' inventory of raw materials...and should be repealed or amended..." Herschend clarified that he brought it up last week because he had the cause to go through licensing and came across that statute so just wanted to make sure everything was being done.

Presiding Commissioner Pennel asked if this was something that the Assessor and Commissioner Herschend could bring up with Missouri Association of Counties (MAC). A general discussion ensued.

## **ORDINANCE ON VENDORS**

Commissioner Herschend said that he had an ordinance, which he was going to move for approval. Commissioner Herschend read the following ordinance in regards to vendors:

**IN THE COUNTY COMMISSION OF TANEY COUNTY, MISSOURI  
AN ORDINANCE REGULATING USE OF RIGHTS-OF-WAY AND EASEMENTS THAT ARE POSSESSED BY TANEY  
COUNTY IN RELATION TO THE COUNTY MAINTAINED ROAD SYSTEM**

WHEREAS, the County of Taney, State of Missouri, has an extensive county road system, maintained and supervised by Taney County; and,  
WHEREAS, in connection with said roads and road system, Taney County also possesses easements, rights-of-way in fee simple, and other property interests adjacent to the roads in the Taney County maintained road system; and,  
WHEREAS, the safety of the traveling public and the safety of the citizens and pedestrians of Taney County, Missouri are well served by promulgating reasonable regulations concerning the use of said properties; and,  
WHEREAS, the Taney County Commission is a Missouri county of the first classification; and,  
WHEREAS, Section 49.266 of the Revised Statutes of Missouri sets forth that the county commission in first class counties may by order or ordinance, promulgate reasonable regulations concerning the use of county property; and,  
WHEREAS, Section 49.266 of the Revised Statutes of Missouri also provides for the Taney County Commission to promulgate by order or ordinance reasonable regulations controlling pedestrian and vehicular traffic, and to control parking on county property; and,  
WHEREAS, Section 49.270 of the Revised Statutes of Missouri sets forth that the county commission shall have and control and management of the property, real and personal, belonging to the county; and,  
WHEREAS, Taney County, Missouri enters into contracts with vendors to operate certain businesses on county property from time to time, when said activity is not adverse to the interests of the public or Taney County taxpayers; and,  
WHEREAS, at least one entity has the right to the exclusion of all others by terms of an acquired easement to operate a business, and to be a vendor on one particular county right-of-way so long as said use does not interfere with safety and use of the road; and,  
WHEREAS, Taney County, Missouri may control the activities on county property by vendors or tenants by contract, and said contracts are designed to also regulate the use of county property to insure the safety of the public:

NOW THEREFORE BE IT ORDAINED BY THE COUNTY COMMISSION OF THE COUNTY OF TANEY, MISSOURI, AS FOLLOWS:

SECTION 1. County Ordinances are hereby added to by the adoption of this ordinance regulating the use of certain Taney County easements, rights-of-way, and other property interests held in relation to the county road system, and for the purpose of operating and maintaining safely and efficiently said county road system as follows:

- A. *Trespassing.*  
Easements, rights-of way and other property interests held by Taney County in connection with the operation and maintenance of its county road system are held for road purposes and are not open to use by the public for vending or selling products, produce or any other items. Most of the property held by Taney County, Missouri for use in connection with the county road system is not suitable for use by the public for any purpose other than pedestrian or vehicular travel. No person shall use the Taney County rights-of –way, easements or any other property held in connection with the operation or maintenance of the county road system for any purpose other than pedestrian or vehicular travel unless said individual has valid written permission from the Taney County Commission. Taney County road personnel, law enforcement personnel, or other personnel authorized by the Taney County Commission may request any person using the county roads, or rights-of-way or easements held in relation thereto for purposes other than travel, to leave said property. Any person who fails to comply with this request to leave county property or fails to abide by regulations on file with the county clerk shall be a trespasser.
- B. *Tenants and vendors.*  
Only those persons or entities that have prior written approval from the Taney County Commission, or the Taney County Road and Bridge Department, or that have a written contract with Taney County, Missouri may engage in activities other than pedestrian or vehicular travel, on the property, rights-of-way and easements of Taney County, Missouri.

SECTION 2. *County Park System.*

This ordinance relates to the county roads, rights-of-way, easements and

other property interests held in relation to the county road system and its operation and maintenance, and this ordinance does not effect use of county property held for recreational park purposes.

SECTION 3. *Effective date.*

This ordinance shall be in full force and effect from and after its passage.

SECTION 4. *Other remedies.*

This ordinance does not preclude or prevent Taney County, Missouri from taking all other actions available to it against trespassers or others who violate the rules or regulations concerning county property.

PASSED AND SO ORDAINED AT THE COURTHOUSE IN FORSYTH, MISSOURI ON THIS 10<sup>TH</sup> DAY OF JULY 2006.

Presiding Commissioner Pennel asked Bob Paulson, County Counselor if a public hearing needed to be set, as in the past the Commission has set public meetings for ordinances? Paulson responded that the statutes for this ordinance, regulates the use of roadside easements for public safety and do not require a public meeting. Paulson added that the Commission could have a public meeting anytime they want.

Commissioner Herschend expressed that it is good to clarify as much as possible. Herschend requested that the Commission go ahead and pass the ordinance now, for public safety and stressed that he wants to prevent people from parking on one side of the road and running across the road therefore putting people at an unnecessary risk.

Bob Paulson confirmed that the Commission could amend or eliminate ordinances after public hearings and added it is his understanding that an ordinance has passed allowing the county to take in roads. Paulson clarified that the ordinance should go into effect after August 28, 2006.

Commissioner Pennel's expressed that the state built the scenic view pullout for viewing, not vending and added the he received a call from Powell Howard, who has a right to vend, but on the other side of rock wall, not in the parking area. Pennel further expressed that he would feel a little more comfortable having this on the agenda for a public hearing next week.

Commissioner Herschend stated that he didn't feel it was necessary to have a public meeting and that he wouldn't be available next week.

Commissioner Strahan also expressed that he would like to have a public hearing before adopting the ordinance.

Commissioner Herschend made a motion to table the ordinance until July 19, 2006. The motion died for the lack of a second.

Art Beck commented that the state has a good statute on this issue and that this never happens on state property. Beck shared that two years ago, two people from the area were killed in Tennessee, in a similar situation. A general discussion ensued.

Commissioner Herschend rescinded his motion to table, and moved to approve ordinance #06-0710 today, to have a public meeting, and amend if necessary, in two weeks on July 24, 2006 at 9:00 a.m. Commissioner Pennel seconded the motion to

approve. The motion passed by a vote of two: Pennel (yes), Herschend (yes), and Strahan (no).

### **BUDGET REPORT RICK FINDLEY**

Rick Findley, Auditor presented the following monthly budget report to the Commission:

Rick Findley explained that Road and Bridge has two accounts: one is down and one is up and if the two are added together, the account is up.

Commissioner Herschend questioned where the county is on the Branson sales tax TIF? Findley answered that it is currently being held.

Bob Paulson, County Counselor related that there is case law in regards to earmarked funds, which states if funds were earmarked prior to the passing of the TIF statute, then those monies can be seized. Paulson interpreted the case law to apply differently to issues that occur after the TIF statute. A general discussion ensued.

### **PRIOR MINUTES**

Commissioner Herschend made a motion to approve minutes from May 15, June 12, 28, and July 3, 2006. Commissioner Strahan seconded the motion. The motion passed by a vote of three: Pennel (yes), Herschend (yes), Strahan (yes).

### **ACCOUNTS ALLOWED**

Commissioner Herschend made a motion to approve accounts payable warrants #95571-95632 and manual warrants #4531, 4532, 4533 as presented, with the exception of the \$350 bill from the Public Administrator that was pulled out. Herschend added that the credit card payment was presented by Mr. Findley, and reviewed by Tressa Luttrell. Commissioner Pennel seconded the motion. The motion passed by a vote of three: Pennel (yes), Herschend (yes), Strahan (yes).

### **SAFETY BOOT REIMBURSEMENT**

Commissioner Herschend moved to ratify by vote the decision to reimburse Road and Bridge employees for \$100.00 a year for safety boots, that are OSHA approved, and changes to the uniform policy allowing shorts. Commissioner Strahan seconded the vote. The motion passed by a vote of three: Pennel (yes), Herschend (yes), Strahan (yes).

**RECESS**  
10:20 a.m.