

**JULY 24, 2006 THE 5<sup>TH</sup> DAY OF THE  
JULY ADJOURN TERM**

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

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

**REVIEW OF BELLVUE ROAD**

Randy Haes, Road and Bridge said there is a resident that has acquired an easement for a turnaround and that he has the easements and survey. Commissioner Strahan added that citizens have presented information on it and the party has acquired easements. Commissioner Strahan further explained that this road started off with a 30-foot easement and the party had to get signatures for the additional ten feet to make it a 40-foot easement.

Commissioner Strahan made a motion to take in Bellevue Road, contingent upon everything coming out right after review by Randy Haes, as to the acquired easements and turnaround. Commissioner Pennel seconded the motion. The motion passed by vote: Pennel (yes), Strahan (yes), Herschend (absent).

**LETTER TO CITY OF BRANSON**

Presiding Commissioner Pennel stated that a motion was made last week, regarding a letter written by Mr. Paul Link, Attorney for the City of Branson, to Assessor Strahan. Pennel read aloud a letter that was sent in response, to the Branson City Council Members. Pennel added in the letter that no facts had been discovered to substantiate the claims made about the assessor, issues surrounding the Bee Creek Sewer Project, the TIF issue, and the proposed roundabout at the Lake Taneycomo Bridge. Pennel went on to state that the letter asks for the city to meet with the County Commission.

Commissioner Strahan stated they hadn't heard anything from the City of Branson and that he would rather not comment on the matter of the Strahan property however, he didn't see anything wrong with sending them the letter.

**UPDATE ON MEETING WITH CORP OF ENGINEERS ON MINIMUM FLOWS**

Presiding Commissioner Pennel stated that he spoke with Mike, at the Corp of Engineers and set a meeting for August 3, at 7:00 pm, to be held at the Taney Center, in regards to raising Bull Shoals and the Northfork River. Pennel added that this change was initiated by Arkansas to increase fishing beneath dams.

Commissioner Strahan explained that he met with three officials from the Corp. and they said they are not willing to discuss this issue because it lies between the Corp and Missouri Department of Conservation. Strahan further explained there are concerns about projects interfering with property that have been leased by citizens, as well as the three county roads that will be covered by water. Commissioner Pennel and Commissioner Strahan agreed that they would need another meeting with the Corp in regards to this issue.

## **PUBLIC HEARING IN REGARD TO ORDINANCE #06-0710**

Presiding Commissioner Pennel opened the public hearing for ordinance #06-0710 in regard to vending on county right of ways. Pennel re-read the following ordinance:

### **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.

Commissioner Pennel explained that this issue was voted on at a previous meeting and the vote was two in favor and one opposed. Pennel clarified that the issue surfaced due to vendors selling on a county right of way at a scenic view and that one individual has permission to vend on the other side, by a rock wall but they are selling on the wrong side. Pennel added that without this ordinance, nothing can be done about the situation and it is a safety issue. Pennel clarified when the state was in control of the scenic view there was no vending allowed.

Commissioner Strahan stated he was the “no” vote on the ordinance, and explained that he believes problems could result with auctions, garage sales, and things like that; if safety issues exist, the sheriff’s department could be called and someone removed, if necessary. Strahan further stated that there are auctions, yard sales, and garage sales everywhere and if the county hands out tickets for vending they are regulating too much, as the county roads belong to the citizens and overregulation can lead to other conflicts. Strahan expressed that he believes some clarification is needed.

Commissioner Pennel questioned how regulation would occur? Commissioner Strahan clarified that he felt a sign at that location would be better than creating an ordinance for the entire county and requested Sheriff Russell speak on the issue.

Jimmy Russell, Sheriff asked what prompted the ordinance and what guidelines apply to the counties approval of vendors, as the ordinance says the Commission can approve vendors? Russell wanted to know how the department would know whether vendors had been approved or not. Commissioner Pennel responded that two years ago someone wanted to sell hot dogs and the county turned them down. Pennel expressed a concern that if there isn’t a way to regulate it, then the county could end up with a number of vendors parking on the side of a road and that he did not foresee the county approving vendors, but the ordinance allows for future decisions.

Bob Paulson, County Counselor clarified that he was requested by Commissioner Herschend to create the ordinance and that there could be a list at the Sheriff’s Office if vendors were approved and added there is one vender in the area that may or may not

have a valid permit which was obtained through the state and is filed in the Recorder's Office. Paulson further clarified, in regards to auctions and yard/garage sales, that the ordinance does not make provisions for parking at these activities, but that something could be added to it, if needed.

Sheriff Russell agreed that if the county wants to stop all vending, they would need an ordinance, but that 99% of the time people will respond to a sign and an ordinance may not be necessary.

James Strahan, Assessor commented that it looks like a power struggle and that Highway 165 is a particularly dangerous situation at the scenic view, as children run back and forth between it and the ice cream shop.

Lucy Combs, in discussion of this ordinance and other ordinances, asked the Commission to rescind the law to comply with state statutes and asked if the Sheriff could regulate this issue, in a manner similar to the state? Combs referenced statutes that cover the County Commission/county building and asked how tenants are defined? Bob Paulson responded that the captions in titles only give an idea and do not cover all of what is in a statute. Paulson explained that statute 49.267 talks about regulating speed limits in second-class counties and this statute does not just have to do with buildings. Combs shared that the Urban Service District did a study on this sewer service and wrote a review of the findings but it was never defined to the public. Combs stated that she suggested the City of Branson get together with a mediator to listen and try to help in their decision-making process.

John Logan stated that he was here on the method, not the ordinance, and wanted to know why there was a public hearing after the law as been passed. Logan added that he believes there are plenty of rules in this county and that Sheriff Russell could take care of any vendors on county property, such as lookouts, with signs. Logan quoted, "He who governs best governs least" and asked if there was a sign out there, could the sheriff then be called? Paulson responded that the Commission could have a meeting before and/or after passing the ordinance and added that if the county puts up a sign at the lookout, regulating activity, it would need an ordinance to regulate that activity.

Commissioner Pennel said his understanding was that the county couldn't regulate it without an ordinance and that the sheriff's department wasn't comfortable enforcing it without an ordinance.

Rick Findley, Auditor asked Mr. Paulson if they could regulate the activity without the ordinance? Paulson responded that in some cases they would and in some they would not. Sheriff Russell explained that the Sheriff's Department did need the ordinance to be able to enforce this properly, but commented that there should be guidelines set to ensure that the ordinance would be applied equally.

Art Beck shared that at one time he had five catering trucks and it stated very clearly on his license that there was to be no vending off of county or state property, but if he wanted to, he could go on private property and put his truck by a fence off of state property. Paulson reiterated that the county is not regulating private property.

Sheriff Russell asked Pennel as to how much the scenic view area on Highway 165 is under current county control? Commissioner Pennel responded that he wasn't certain but his understanding was that it goes beyond the rock wall and on the other side of the highway. Paulson said that he couldn't say with certainty, without looking at the deed.

Gary Groman explained that he owns property along a county road and asked if his grandkid sold lemonade on his property would this ordinance affect them? Groman added that the same would go for auctions or garage sales. Paulson confirmed that it would not affect them. A general discussion ensued.

Commissioner Pennel said that he was in favor of sending this ordinance to another attorney since there is so much concern over the way it is written. Commissioner Strahan said that he was talking about the way it is written and that he assumed from that writing that it does pertain to auctions and garage sales and things like that. Bob Paulson agreed to review and add language to clarify the concerns voiced.

#### **AGENDA AMENDMENT**

Presiding Commissioner Pennel made a motion to amend the agenda to include accounts payable. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Strahan (yes), Ron Herschend (absent).

#### **ACCOUNTS ALLOWED**

Presiding Commissioner Pennel made a motion to approve accounts payable warrants #95775-95879 and manual warrants #4538-4539. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Strahan (yes), Ron Herschend (absent).

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