

**OCTOBER 6, 2008 1st DAY OF
THE REGULAR OCTOBER ADJOURNED TERM**

The County Commission met in the County Commission Hearing Room at 9:00 a.m. pursuant to adjourn with all members present and the following proceedings were had and made a matter of record.

Prayer was led by Auditor Findley followed by the pledge.

ACCOUNTS ALLOWED

Commissioner Strahan made a motion to approve accounts payable warrants #306079-306164 and manual warrants #4899-4900. Commissioner Pennel seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

PRIOR MINUTES

Commissioner Herschend made a motion to approve prior Commission Minutes dated 9/11/2008, 9/22/2008, 9/30/2008 and 10/1/2008. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

PURVIS LANE

Commissioner Herschend made a motion to deny taking in Purvis Lane to the county maintenance system at this time. Commissioner Strahan directed Frank Preston, Road & Bridge Administrator, to read his summary of Purvis Lane into the record before a decision is rendered.

Mr. Preston read the following:

Summary of Purvis Lane

1. Original petition with signatures dated 10-17-01.
2. Letter of denial. No records of Purvis Lane ever being taken in to the county road system. 11-7-01.
3. Road petition review dated 5-12-03.
4. Letter of denial of petition until right-of-way is granted dated 5-03.
5. Interviewed 2 long term employees that stated they were told to fix the road on a one time only basis.
 - a. Sam Yarnell
 - b. David Stottle
6. Quit Claim Deed (road easement) 5-22-91. Mary Purvis
7. Quit Claim Deed (road easement) 5-3-01. Robert Didier
8. Taney County Commission record from 1998 on Purvis Lane – Commissioner Meadows made a motion to take Purvis Lane into the County Road System for grader maintenance for a period of 1 year and added that the road should be declared a disaster. Commissioner Gann seconded the motion. The motion passed by vote: Gann (yes), Meadows (yes), Keys (yes).

Commissioner Strahan seconded the motion as there was no evidence that it had been a county maintained road in the past. Commissioner Pennel expressed his opposition as it was no different than Peppertree, which was accepted into the county maintenance system as a Class VI. The motion passed by vote: Pennel (no), Herschend (yes), Strahan (yes).

RICK FINDLEY

Mr. Rick Findley, County Auditor, submitted the monthly budget report via email and it read as follows:

FUNDBALANCE 09/30/08	TANEY COUNTY BUDGET FUND BALANCES	
	PERIOD TO DATE ACTUAL	YEAR TO DATE ACTUAL
GENERAL COUNTY REVENUE		
BEGINNING BALANCE	\$0.00	\$18,628,344.77
REVENUES	2,015,372.18	11,984,282.89
	-	-
TOTAL REVENUES GCR	2,015,372.18	30,612,627.66
	-	-
TOTAL GCR EXPENDITURES	1,775,598.01	16,289,137.11
	=	=
TOTAL GCR FUND BALANCE	239,774.17	14,323,490.55
ROAD & BRIDGE		
BEGINNING BALANCE	0.00	7,004,998.91
REVENUES	99,695.22	1,092,864.06
	-	-
TOTAL RB REVENUES	99,695.22	8,097,862.97
	-	-
EXPENDITURES	971,663.55	4,583,043.64
	=	=
TOTAL RB FUND BALANCE	(871,968.33)	3,514,819.33
ROAD & BRIDGE TRUST		
BEGINNING BALANCE	0.00	3,693,493.95
REVENUES	1,112,127.06	5,541,423.01
	-	-
TOTAL RBT REVENUES	1,112,127.06	9,234,916.96
	-	-

EXPENDITURES	=	1,248,324.96	=	6,558,879.40
TOTAL RBT FUND BALANCE	=	(136,197.90)	=	2,676,037.56

ASSESSMENT FUND				
BEGINNING BALANCE		0.00		3,099.75
REVENUES	-	42,730.20	-	462,189.50
TOTAL AF REVENUES	-	42,730.20	-	465,289.25
EXPENDITURES	=	44,378.03	=	464,943.83
TOTAL ASSEMENT FUND BALANCE	=	(1,647.83)	=	345.42

ELECTION FUND				
BEGINNING BALANCE		0.00		31,698.41
REVENUES	-	85.05	-	12,451.35
TOTAL ELECTION REVENUES	-	85.05	-	44,149.76
EXPENDITURES	=	1,125.97	=	12,546.43
TOTAL ELECTION FUND BALANCE	=	(1,040.92)	=	31,603.33

TRANSFER STATION FUND				
BEGINNING BALANCE		0.00		747,493.99
REVENUES	-	95,973.85	-	855,148.35
TOTAL TS REVENUES	-	95,973.85	-	1,602,642.34
EXPENDITURES	=	94,185.02	=	852,840.45
TOTAL TS FUND BALANCE	=	1,788.83	=	749,801.89

FUNDBALANCE				
09/30/08				
		TANEY		
		COUNTY		
		BUDGET		
		FUND		
		BALANCES		
		PERIOD TO		YEAR TO
		DATE		DATE
		ACTUAL		ACTUAL

LEPC FUND				
BEGINNING BALANCE		\$0.00		\$11,839.45
REVENUES		9.58		1,961.07

TOTAL LEPC REVENUES	-	9.58	13,800.52
EXPENDITURES	-	177.73	4,731.31
TOTAL LEPC FUND BALANCE	=	(168.15)	9,069.21
LAW ENFORCEMENT TRAINING FUND			
BEGINNING BALANCE		0.00	3,608.14
REVENUES	-	427.35	3,767.11
TOTAL LET REVENUES	-	427.35	7,375.25
EXPENDITURES	-	0.00	5,159.93
TOTAL LET FUND BALANCE	=	427.35	2,215.32
PROSECUTING ATTORNEY TRAINING FUND			
BEGINNING BALANCE		0.00	6,364.77
REVENUES	-	113.58	1,137.76
TOTAL PAT REVENUES	-	113.58	7,502.53
EXPENDITURES	-	412.83	1,267.51
TOTAL PAT FUND BALANCE	=	(299.25)	6,235.02
COUNTY INSURED FUND			
BEGINNING BALANCE		0.00	96,313.14
REVENUES	-	137.54	3,162.85
TOTAL COUNTY INSURED REVENUES	-	137.54	99,475.99
EXPENDITURES	-	13,885.71	57,341.75
TOTAL COUNTY INSURED FUND BALANCE	=	(13,748.17)	42,134.24
911 FUND			
BEGINNING BALANCE		0.00	1,099,556.88
REVENUES	-	43,183.29	415,612.44
TOTAL 911 REVENUES	-	43,183.29	1,515,169.32
EXPENDITURES	-	479,212.79	644,671.64
TOTAL 911 FUND BALANCE	=	(436,029.50)	870,497.68

USE TAX

FUNDBALANCE 09/30/08	TANEY COUNTY BUDGET FUND BALANCES	
	PERIOD TO DATE ACTUAL	YEAR TO DATE ACTUAL
SEWER FUND		
BEGINNING BALANCE	\$0.00	\$23,082,218.45
REVENUES	1,533,480.29	10,518,958.01
	-	-
TOTAL SEWER REVENUES	1,533,480.29	33,601,176.46
	-	-
EXPENDITURES	1,031,968.60	6,453,868.64
	=	=
TOTAL SEWER FUND BALANCE	501,511.69	27,147,307.82
SEWER DESIGNATED FUND EXPENDITURES		
	=	=
TOTAL ALL SEWER FUNDS	501,511.69	27,147,307.82
	=	=
SHERIFF CIVIL FUND		
BEGINNING BALANCE	0.00	97,171.17
REVENUES	144.24	60,709.39
	-	-
TOTAL SHERIFF CIVIL REVENUES	144.24	157,880.56
	-	-
EXPENDITURES	2,924.75	21,565.54
	=	=
TOTAL SHERIFF CIVIL FUND BALANCE	(2,780.51)	136,315.02
TAX MAINTENANCE FUND		
BEGINNING BALANCE	0.00	111,445.25
REVENUES	6,958.31	91,914.84
	-	-
TOTAL MAINTENANCE FUND REVENUES	6,958.31	203,360.09
	-	-
EXPENDITURES	857.47	89,895.59

TOTAL MAINTENANCE FUND BALANCE

=

6,100.84

=

113,464.50

COMMISSIONER HERSCHEND

Commissioner Herschend questioned whether the Industrial Development Authority's office would continue to stay in the old Sheriff's Office or switch offices with the Veteran's Administration. He also had concerns that if there was a relocation of the Veteran's Administration it would be extremely difficult for people to climb stairs.

Ms. Luttrell stated there would be discussion of this nature at this afternoon's work session.

Commissioner Herschend also commented on installing double doors at the annex to remove old furniture, as it will not fit through the existing door, due to a conversation that he had with Mr. John Lavender, Maintenance Supervisor. Commissioner Pennel suggested the process change as far as if a department head has a question or an issue, he/she needs to speak to the entire Commission. He also requested the presence of Mr. Lavender at the afternoon work session.

COMMISSIONER PENNEL

Commissioner Pennel announced there will be a bulletin board designated for the county to inform the public of agendas, notices and postings located inside Country Mart. Commissioner Herschend suggested half of the board used for official county business and the other half for public notices. A general discussion ensued.

PUBLIC COMMENT

Art Beck commented on voting and registering on the same day, as well as noting the work that had been accomplished on Casey Road.

RECESS
9:32 a.m.

Minutes were taken and typed by Nikki Lawrence.

RECONVENE
10:38 a.m.

CASEY ROAD **DEGRAFFENREID PROPERTY**

Jerry Degraffenreid met with the Commission to discuss the previous proposal for damages sustained to his property during the construction of Casey Road.

Commissioner Strahan made a motion to award the amount of money to replace the woven wire fence with labor and material being \$2,116.95. Commissioner Herschend noted that he would like to see the Commission do something more than what was there as the County stored material, damaged their property and they have been very patient. Commissioner Pennel asked what the County had done to previous areas where they had taken down a fence. Mr. Preston stated that he didn't know all the details. Commissioner Pennel suggested looking at the trees first noting that he thought the Commission had already agreed on replacing the trees. Commissioner Strahan commented that he had checked the minutes and no action was ever taken.

Mr. Degraffenreid commented that his goal was not to spend as much money as he could but added that these trees were a harder tree as they were subject to the wind and ice. Commissioner Pennel made a motion to compensate Mr. Degraffenreid \$12,000 for the trees and the fencing with the county not performing the work. Mr. Degraffenreid questioned why they had to come up with the additional fencing as the trees are now gone, it's not the type of fencing that would have been there if the trees were there. With the trees gone it leaves you with either putting up a wooden or vinyl fence, there was a lot of value in those trees.

Commissioner Herschend made a motion to pay \$9,080.00 for the trees, \$500.00 for the watering system and \$4,750.00 for the labor. Commissioner Strahan commented that he was trying to picture what exactly we have here. There was trees taken out that were both inside and outside of the right-of-way. Commissioner Strahan added that by looking at the pictures that the electric company took, to a certain level those trees were the county's to take out. Commissioner Herschend commented that he thought they should clearly go back to the construction company and if they took out those trees the county should be reimbursed. Commissioner Herschend noted that there is a clear difference in a 4" tree versus a full grown tree and the county did change the value of the property.

Commissioner Pennel made a motion to compensate Mr. Degraffenreid \$20,000.00 for the damage done to his property for fencing and trees and that Mr. Degraffenreid sign a release that he is satisfied. Commissioner Herschend seconded the motion.

Commissioner Strahan noted that he would like for Mr. Degraffenreid to agree to support the county's efforts to get reimbursed. Mr. Degraffenreid stated absolutely. Mr. Preston commented that another factor is that neither the Degraffenreids nor the County authorized for those additional trees to be removed. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

Commissioner Herschend noted that the Commission would ask Counselor Paulson to write up a release.

RECESS

**RECONVENE
1:05 p.m.**

**BOB PAULSON
WORK SESSION**

Counselor Paulson met with the Commission to discuss various legal issues as well as reviewing his schedule.

Commissioner Pennel made a motion to ask Counsel to pursue the nuisance at 150 Quincy Road. Motion withdrawn.

1. Salary Commission Opinion: Counselor Paulson gave the following opinion:

TO: Taney County Commission
Taney County Clerk

FROM: Taney County Counselor
Robert R. Paulson II

RE: Calculating County Commissioner Salaries

DATE: October 6, 2008

Commissioner Salaries

According to Section 50.343 of the Revised Statutes of Missouri, Presiding Commissioners have the same salary schedule as the recorder of deeds, the clerk, the auditor, the collector and the treasurer. Section 50.343.1(2) RSMo states that presiding commissioners shall receive a salary of two thousand dollars more than the salary received by associate commissioners.

There is no statute section specifically setting forth the salary for an associate commissioner. An associate commissioner's salary must be derived from the salary schedule for presiding commissioners.

Does a presiding commissioner not get 100% of the salary schedule amount on his year of incumbency when voted by the Salary Commission if that would put the presiding commissioner's salary at more than \$2,000.00 above the salary then being received by the two associate commissioners?

Does an associate commissioner not get \$2,000.00 less than 100% of the salary schedule amount for a Presiding Commissioner on the associate's year of incumbency when voted by the Salary Commission, if that amount would place the associate's salary within \$2,000.00 of the amount currently being received by the Presiding Commissioner? Remember that a Presiding cannot take a mid-term raise per Missouri Constitution, Article VII, Section 13.

Following this line of reasoning, the Presiding would never get a raise that would put his salary at \$4,000.00 more than an associate commissioner. Further, an associate commissioner would never get a raise that would cause him to receive the same salary the Presiding was currently receiving. Therefore, in counties where the Presiding Commissioners are elected two years after the two Associate Commissioners are elected, neither the Presiding nor the Associate Commissioners would ever get an increase in salary per the salary schedule, even if the Salary Commission voted for it.

As the assessed valuation increased, the Commissioner's salaries would not stay on a level with the salaries for the other officers listed in the same schedule. Such an interpretation would contradict the intent of the Salary Commission voting all officers salaries to be set at 100% of the applicable salary schedule. Therefore, such an interpretation is not logical.

Further, Section 50.333.7 RSMo would have to be harmonized with the applicable sections of Section 50.343 RSMo regarding the issue being considered in this memorandum. Section 50.333.7 RSMo states in pertinent part, "[i]f the salary commission votes to increase the compensation, all officers or offices whose compensation is being considered by the commission at that time shall receive the same percentage of the maximum

allowable compensation.” Clearly, it would violate the provisions of Section 50.333.7 RSMo for a Commissioner to not receive the same percentage increase in order to strictly comply with Section 50.343.1(2) RSMo.

The best and perhaps the only way to harmonize the different statutes and statute subsections, and at the same time to give effect to the legislative intent in calculating salaries would be to add an imaginary separate table in Section 50.343 RSMo for Associate Commissioners. The imaginary table would set the Associate Commissioners’ salaries at \$2,000.00 less at each assessed valuation level than that set forth in the existing table.

The County Clerk and others have also asked about how the assessed valuation year is chosen. The assessed valuation level is calculated by taking the total assessed valuation in Taney County for the **year next preceding the first day of the new term** of office. If an official takes office on January 1, 2009, the next preceding year is 2008. The actual language is “**the year next preceding the computation.**” The date of computation is not set forth in the statutes, however, logically the computation is not made until the salary must be paid.

2. County Clerk, Secretary for the Salary Commission Opinion: Counselor Paulson gave the following opinion:

TO: Taney County Clerk
Donna Neeley

FROM: Taney County Counselor
Robert R. Paulson II

RE: Clerk’s Salary Commission Duties

DATE: October 6, 2008

County Clerk’s Salary Commission Duties

The statutes regarding the Salary Commission set forth that the County Clerk shall keep the minutes of the Salary Commission meetings. Section 50.333.5 RSMo The statutes also state that the report of compensation shall be certified to the County Clerk. Section 50.333.8 RSMo This subsection 8 of the statute sets forth substantially the form in which the certification shall appear. This subsection implies that the County Clerk shall receive the certification, and shall keep it with the minutes of the Salary Commission meeting from which it was generated.

The best procedure would be to have the certification prepared at the meeting and be a part of the minutes. Even if separate from the minutes, there is a fair inference that the County Clerk is to prepare the certification from the decision of the meeting. This does not mean that the County Clerk is the entity making the certification, that entity is the Salary Commission. The County Clerk would merely prepare the certification, and the certification would be in the required form and would include the information provided by the Salary Commission.

Nowhere does the statute grant the power to the County Clerk to interpret the certification delivered to her to determine the actual amount in dollars that the individual officeholders are to be paid. The duty to determine this amount is a ministerial duty for [my best guess] the budget officer and the county commission. There should be no discretion in calculating the amount, and that amount should be very clear from the report of compensation.

A potential problem exists due to the form. However, the statutory form of the report of compensation requires that the salaries be stated in percentages of the maximum allowable compensation. In the event an actual salary amount is unclear from the certification of the Salary Commission, and more than one amount is possible, there is a problem. The best solution to this problem would be to get an official opinion of the County Counselor who serves as legal advisor for all county entities including the budget officer, the County Commission and the Salary Commission.

In conclusion, the duties of a county clerk regarding the salary commission as set forth in Section 50.333 RSMo are as follows:

1. County clerk is a voting member of the Salary Commission.
2. County clerk presents a financial condition of the county report to the commission, once a chairman is elected.
3. County clerk shall keep the minutes of the meeting.
4. County clerk shall receive the report of compensation that is certified to her by the salary commission.

* [1 through 3 are from Section 50.333.5 RSMo, and the duty in 4 is implied from Section 50.333.8 RSMo.]

3. Wilson Agreement: Counselor Paulson read the Wilson Agreement and noted all changes. Commissioner Strahan made a motion to approve said agreement. Commissioner Pennel seconded the motion. The motion passed by vote: Pennel (yes), Herschend (abstain), Strahan (yes).
4. ABL Amendment: Ms. Luttrell noted that the amendment changes the starting date of operation, as the prisoners were not moved by the original date of the contract. Commissioner Strahan made a motion to approve said amendment. Commissioner Herschend seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).
5. Davis Aviation contract: Commissioner Strahan made a motion to table said contract questioning whether the Airport Board had had a chance to approve said contract. Commissioner Herschend seconded the motion noting that he would like to know what type of operation it was as well. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

ANNEX BUILDING / AUCTION

John Lavender, Maintenance Supervisor was present at the Commission's request to discuss the placement of double doors at the annex as well as the removal of existing furniture/fixtures in the jail annex. It was determined that the existing items would not be removed in a timely fashion for the auction being held on the 11th of October and may be of more value to scrap.

Mr. Lavender did indicate that he has a set of double doors taken from the old Records office just waiting to be installed, however because of the air handlers and some other misc things, there is only one location that the door can be installed.

Commissioner Strahan made a motion to put the double doors in the annex since it would split the building and benefit whoever is placed in there. Commissioner Herschend seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

BUILDING MOVES VETERAN / IDA OFFICE

Commissioner Herschend brought up the issue of moving the IDA office to the new Veteran office location noting that the Veteran office would not be handicapped accessible.

Commissioner Strahan made a motion to locate the IDA office at the Taney County Airport. Commissioner Herschend seconded the motion. Commissioner Herschend noted that he would make the move until we are totally done with the remodeling since the office is already in place.

Commissioner Pennel stated that he was not ready to make that decision and questioned as to where the office would be located at the Airport and how would the expense be paid for. Commissioner Strahan commented that there are three little offices of which two are taken up by the Chamber and the car rental.

Commissioner Pennel asked what budget would pay for this. Commissioner Herschend noted that it couldn't be more than \$2,000 and the IDA should have some money left in their budget since they were without an employee for some time. Commissioner Pennel added that he was not necessarily against having an office at the Airport but that he wasn't prepared to discuss it today. The motion passed by vote: Pennel (no), Herschend (yes), Strahan (yes).

SEPTAGON WEEKLY UPDATE

Commissioner Herschend made a motion to approve the following:

ASI#9: Changing glass types for an additional cost of \$145.00
RFI#178: Enlarged window frames for an additional cost of \$402.00
RFI#23: Decreased curtain wall frame width for a credit of \$727.00
RFI#21: Changed curtain wall dimensions for a credit of \$1,322.00
RFI#22: Adding glazing for an additional \$3,071.00
RFI#20: Combine 2 separate window frames for an additional \$860.00
RFI#19: Change glass type for a credit of \$122.00
Field Change: Added suspended ceiling to elevator room 084; required to pass elevator inspection for an additional cost of \$1,382.00
Field Change: Add a heat detector and smoke detector to each elevator as required by state elevator inspector for an additional cost of \$1,811.00

Commissioner Pennel seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

Mike Smith, Construction Manager updated the Commission on a few items that were still lingering to get decisions on. Commissioner Herschend stated that he had spoken with Rick Quint and informed him that the Commission needed to set down and talk about the liquidated damages. Commissioner Herschend requested that Mr. Smith document when the building was turned over to the County and when the Sheriff was able to move the prisoners in. Mr. Smith noted that there is no substantial completion date in the contract, that there is only a completion date which is September 8, 2008.

FRANK PRESTON & TRESSA LUTTRELL WORK SESSION

Frank Preston, Road & Bridge Administrator and Tressa Luttrell, County Administrator met with the Commission to discuss various issues.

1. Waste Corp request: Ms. Luttrell commented that she had received a request from Waste Corp. "Waste Corp has purchased Advantage Waste which had minimal services in Taney County. Advantage Waste has a charge account at the Transfer Station for the roll-off operation and we would ask permission to empty 2 loads per day under the Advantage account as well as our normal 2 loads per day under the WCA account until we can integrate the customer base. WCA is responsible for any Advantage charges therefore there will be no payment issues, but, we definitely need the transfer access for 4 loads per day for a short period of time. We certainly do not want to alienate the transfer station personnel therefore I would appreciate your response/approval as quickly as possible.

Commissioner Herschend made a motion to approve said request through 1/1/09. Commissioner Pennel seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).

Commissioner Herschend left the meeting at 3:05 p.m.

**DAN WATTS, SMACOG
FRANK MILLER, MODOT**

Dan Watts representing SMACOG and Frank Miller representing MoDot along with Buddy Roberts met with the Commission to discuss transportation needs within Taney County. Mr. Watts presented the Commission with a compilation of needs within Taney County and their ranking within the 10 county region that Mr. Watts represents.

Mr. Watts indicated that he would like to see the Commission take this listing and rank the importance of each one within the County.

**REMAINDER OF MEETING
TABLED**

Commissioner Pennel made a motion to table the remainder of the meeting until Tuesday, October 7th at 9:00 a.m. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (absent), Strahan (yes).