

**Park County Board of County Commissioners
Special Meeting
May 2, 2013**

A special meeting of the Board of County Commissioners of Park County, Wyoming, was held on Tuesday, May 2, 2013. Present were Chairman Loren Grosskopf, Commissioners Bucky Hall, Lee Livingston, Joe Tilden and Tim French, and County Clerk Jerri Torczon.

Chairman Loren Grosskopf called the meeting to order and County Clerk Jerri Torczon led the audience in the Pledge of Allegiance.

Contested Case Hearing - In the Matter of the Petition of Scott Justice and Marjory Justice, et al, for the Establishment of a County Highway,

Chairman Grosskopf, acting as Hearing Officer in the Contested Case Hearing of the Petition of Scott Justice and Marjory Justice, et al., for the Establishment of a County Highway, called on James F. Davis, Deputy County Attorney, to present his case in point.

Mr. Davis stated that this meeting was scheduled for a Contested Case Hearing, based on an Order of Reversal and Remand by District Court Judge Steven Cranfill on Stephen and Audrey Smith's appeal of Park County RESOLUTION NO. 2009-05, DISMISSING PETITION FILED BY SCOTT AND MARJORY JUSTICE, ET AL., TO ESTABLISH A COUNTY ROAD IN T.49N., R. 100 W., 6TH P.M., PARK COUNTY, WYOMING, FOLLOWING REMAND BY DISTRICT COURT. Mr. Davis stated that the Smiths, through their attorney, S. Joseph Darrah, have filed a Motion to Dismiss Without Prejudice, as they will have sold the subject property prior to the hearing and no longer have a standing in this matter. Park County has since filed an Objection to the Motion to Dismiss, as witnesses were subpoenaed to present evidence and Park County seeks to proceed with the presentation of evidence.

Mr. Davis offered forty-five exhibits. No objections were raised to the Exhibits offered into the record.

Exhibit No. 1 - Original Petition of Scott and Marjory Justice to Establish a County Road, which was filed on January 27, 2006.

Exhibit No. 2 - Viewer's Report, filed by Frank Page, Park County Engineer, dated April 3, 2006.

Exhibit No. 3 - **RESOLUTION NO. 2006-41**, DISMISSING PETITION FILED BY SCOTT AND MARJORIE JUSTICE, ET AL., TO ESTABLISH A COUNTY ROAD IN T. 49N. R.100W., 6TH P.M., PARK COUNTY WYOMING, signed May 17, 2006, said dismissal based on the reason that the petition was unnecessary as the Road 31C is part of Road 11, established in 1902 as a county road.

Exhibit No. 4 - Letter of Donald Livingston of Engineering Associates, dated November 19, 2008, stating that Road 11 was established as a county road in September of 1902 by the Big Horn County Commissioners and resurveyed in 1905 and 1906. In Mr. Livingston's opinion the road in question is part of County Road 11.

Exhibit No. 5 - **RESOLUTION NO. 2009-05**, DISMISSING PETITION FILED BY SCOTT AND MARJORY JUSTICE, ET AL., TO ESTABLISH A COUNTY ROAD IN T.49N. R.100W., 6TH P.M., PARK COUNTY, WYOMING, FOLLOWING REMAND BY DISTRICT COURT.

Exhibit No. 6 - Plat map of County Roads in Township No. 49 North, Range 100 West of the 6th Prime Meridian, Big Horn County, Wyoming, dated September 25, 1911.

Exhibit No. 7 - Copies of notes on Road 11, filed in the office of Park County Road & Bridge, with dates of August 7, 1901; September 4, 1901; September 2, 1902; October 8, 1902; and December 30, 1901.

Exhibit No. 8 - Certified copies of Big Horn County Commissioner Minutes of August 7, 1901, September 4, 1901, September 2, 1902, October 8, 1902 and December 30, 1902, relating to the establishment and construction of a road from Meeteetse to Cody and declaring it a county road.

Exhibit No. 9 - 17 - Photographs of County Road 31C and the intersection with County Road 3JC .

Exhibit No. 18 - Survey map of Lot 67, T49N, R100W, 6th P.M., Park County, Wyoming, completed by Scott H. Lewis, Professional Engineer (Civil) & Land Surveyor, dated May 10, 2012, showing Park County Road 31C.

Exhibit No. 19 - Resume of Stanton J. Abell, Jr., Vice-President and Professional Engineer with Grosch Construction, Inc. of Worland, Wyoming.

Exhibit No. 20 - Memorandum of Stanton J. Abell, Jr., PE/LS regarding Park County Road 31C, stating that the record clearly shows that the Road 11 was legally established, constructed and used and is still a county road where it physically exists upon the ground. No evidence that the road was formally abandoned.

Exhibit No. 21 - A map of the proposed county road between Meeteetse and Cody, prepared by the C.E. Hayden, Engineer, surveyed on August 20-25, 1902, showing County Road 11.

Exhibit No. 22 - A Township/Range map showing an as-built survey where County Road 11 existed in 1905.

Exhibit No. 23 - Field Notes of the Resurvey of 49N, R100W, 6th P.M. in Wyoming. Said survey commenced on August 11, 1905 and completed on September 16, 1905.

Exhibit No. 24 - United States Geological Survey Map of 1911 showing the Cody/Meeteetse Road.

Exhibit No. 25 - Map from the Wyoming State Highway Department of the proposed state highway from Cody-Meeteetse, as constructed, dated May 20, 1936.

Exhibit No. 26-28 - Google Earth Maps, with overlays of plat maps, showing placement of Cody to Meeteetse Road, Road 31C and the actual surveyed route, based on notes of C.E. Hayden.

Exhibit No. 29 - United States Geological Survey Map of 1911 showing Cody Road, established October, 1902 and current highway construction from 1936-1940.

Exhibit No. 30 - E-mail from Bruce Burrows of the Wyoming Department of Transportation to James F. Davis regarding construction of the current Highway 120, dated January 13, 2010.

Exhibit No. 31 - Wyoming Highway Department maps of 1920-22 and 1922-24 biennial reports. The maps were based on surveys undertaken in 1910 and 1911, showing Cody-Meeteese Road circa 1911.

Exhibit No. 32 - Letter and resume of Richard T. Muscio, of GDA Engineers, regarding County Road 11, stating that County Road 11 was constructed in the most practical location it could be, while at the same time staying as close to the platted alignment as possible.

Exhibit No. 33 - United States Department of the Interior Geological Survey map 1911, showing the placement of the Cody Road, as it relates to lots.

Exhibit No. 34 - An overlay map of Park County Road 11.

Exhibit No. 35 - An overlay map of Park County Road 11.

Exhibit No. 36 - Letter dated June 17, 1987 from K.F. Tyler, Park County Engineer, to Mr. Larry Bates, Mr. Roy Schatz and Mr. Steven C. Smith, notifying them of the Park County Commissioners' decision that no gates or fences will be permitted on the Cody-Meeteetse Road, and that the Park County claims ownership of all cattle-guards once properly placed on County rights-of-way.

Exhibit No. 37 - Certified copies of County Commissioner Minutes of May 26, 1987, June 2, 1987 and June 16, 1987, regarding the elimination of gates across the county road and placement of cattle-guards.

Exhibit No. 38 - Option to buy between Farm Management Company and Roy and Kathleen Schatz, regarding the lease of the premises, which refers to the county road.

Exhibit No. 39 - Letter dated February 24, 1988 from Farm Management Company to Roy Schatz regarding the lease with option on the property, which refers to county road right-of-way.

Exhibit No. 40 - Letter dated March 25, 1988 from Roy Schatz to Farm Management, which refers to county road.

Exhibit No. 41 - Letter dated October 1, 1987 from George L. Simonton, Attorney, to John W. Creer, President of Farm Management Company which refers to county road.

Exhibit No. 42 - Title Insurance policy refers to the Roy Schatz property and references Park County Road 3JC.

Exhibit No. 43 - Affidavit of John D. (Denny) Lewis, dated April 13, 2013.

Exhibit No. 44 - Warranty Deed of Lewis K. Foster to Stephen C. and Audrey M. Smith, dated January 7, 1985.

Exhibit No. 45 - Right-of-way Easement of Peter Scripps to Stephen C. Smith and Audrey Smith, dated July 23, 2008.

Mr. Davis stated that based on case law, a road is essentially where it is and used by the public, despite variations. Mr. Davis maintains that County Road 3IC is a county road and based on testimony to be presented, the road in question is still a county road, although there are discrepancies or errors in the original survey and notes. Mr. Davis stated that the original road, as established in 1902 was used by the public to travel from Meeteetse to Cody, and was used until Highway 120 came into effect in the 1920's or 1930's. That county road was the only established road between Cody and Meeteetse for decades and has never been vacated.

Mr. Davis called Greg Meinecke, County Engineer, to testify regarding County Road 11. Mr. Meinecke stated that the road was established on September 4, 1901 by Big Horn County Commissioners, and has never been vacated. Mr. Meinecke testified as to the notes on file in his office referring to the establishment, construction and surveys of County Road 11.

Mr. Davis called Stan Abell, Jr., Vice-President and Professional Engineer with Grosch Construction, Inc. of Worland, Wyoming. Mr. Abell testified that he has researched the issue of whether the road is a county road and has reviewed the documents from Big Horn County, the original surveyor's notes and the placement of the road. Mr. Abell testified that the original survey had inaccuracies. Mr. Abell stated that the road was legally established, was constructed by the original land surveyor, and the road built is reflected in later surveys, including the United States General Land Office Resurvey of 1905. Mr. Abell stated that County Road 11, established by Big Horn County, was used until Highway 120 was built. Mr. Abell testified as to the road locations based on Google Earth maps. Mr. Abell testified that County Road 11 was legally established, constructed and used where it physically exists on the ground and that he found no evidence that any part of it was abandoned.

Mr. Davis called Bruce Burrows with the Wyoming Department of Transportation, Public Affairs Division. Mr. Burrows testified as to the approximate

dates of which Highway 120 was built. Mr. Burrows stated that the Highway Department was established by the State of Wyoming in 1917 and for the first two years of its existence, there was no funding or very little. Mr. Burrows stated that there were two projects funded along what is now Highway 120 in 1919-1920 and 1921-1922. From 1936-1940 additional projects were constructed further north to Cody from Meeteetse.

Mr. Davis called Richard T. Muscio, Professional Land Surveyor with GDA Engineers. Mr. Muscio testified that he was asked to look at the original survey notes to see if it could be recreated on the ground. Mr. Muscio stated that he was able to find the GPS location at one of the known points in Cody. Mr. Muscio stated that the road at one point is 600 to 700 feet off of the survey, which he did not view as being far away when you're building a road. Mr. Muscio stated that the road matches the 1911 US Geological topography sheet. Mr. Muscio testified that in his opinion Road 3IC is a county road and it is close to the original alignment as it was constructed.

Mr. Davis called Kenneth F. Tyler, Park County Engineer from 1979-1993. Mr. Tyler was the County Engineer on June 17, 1987 when he sent a letter to Larry Bates, Roy Schatz and Steven C. Smith regarding the old Cody-Meeteetse Road. Mr. Tyler testified why the letter was written and its intent to take all gates off the county road, and to install cattle-guards, pursuant to a vote of Park County Commissioners. Mr. Tyler stated that the road was a county road on the record and the removal of the gates on the road was to make the entire road open.

Mr. Davis called Scott Justice. Mr. Justice testified that he owned twenty acres on Road 3IC from 1993 to 2006. Mr. Justice stated that when he purchased the property, the title insurance referred to the county road, but that the road was referenced as 3JC. Mr. Justice stated that they used the road on a daily basis and that Park County used to plow the road and built a turn-around for the school bus. Mr. Justice stated that he never obtained permission to use the road. Mr. Justice stated that Steve Smith said it was not a county road and that is why he filed the original petition the County to make it a county road.

Mr. Davis called Roy Schatz. Mr. Schatz testified that he previously owned the place that Scott Justice owned. Mr. Schatz stated that the road was referred to as a county road on his title insurance, on his lease with option to buy and in other correspondence, but that road referred to County Road 3JC. Mr. Schatz stated that Park County required that the gates on the road be removed after a dispute between Mr. Schatz and Mr. Smith.

Mr. Davis called Pete Moller. Mr. Moller testified that he lived in the Cody area most of his life and worked on ranches in the Meeteetse area after he got out of high school. Mr. Moller stated that he worked for Jerry Housel in 1959 irrigating and worked on the haying crew. Mr. Moller stated that he lived at what was referred to as the Foster place. Mr. Moller stated that he would use that road (Road 3IC) on a daily basis and never asked anyone permission to use the road. Mr. Moller stated that was the only access road.

Mr. Davis called Thomas Severude. Mr. Severude stated that he currently works for Park County Road and Bridge and has worked there since 2004. Mr. Severude stated that he moved to Meeteetse in 1980 and worked on the Nielson Ranch as foreman. Mr. Severude stated that they would use Road 3IC to access the ranch. Mr. Severude stated that Jack Winninger, a former County Commissioner, referred to it as a county road and would have it bladed before haying season each year. Mr. Severude testified that he bladed that road once a year as a County employee and when it became part of litigation, he was told to stay off the road. Mr. Severude stated that some of the maps Jerry Housel had showed a county right-of-way. Mr. Severude stated that Mr. Smith did not come out and say that it was not a county road. Mr. Severude stated that Road 3IC was labeled as Road 3JC at some point in time.

Mr. Davis called Shane Scott. Mr. Scott testified that he lives in Meeteetse and worked for Park County Road and Bridge beginning in 1989 and worked for eighteen months in the Meeteetse area. Mr. Scott stated that he is familiar with the road referred to as County Road 3IC and used to maintain that road. Mr. Scott testified that the county did do work on the road with a D7 and back sloped the area

to ease the grade. Mr. Scott stated that they would also plow the road on behalf of Park County.

No further testimony was received. Mr. Davis concluded that the road is a county road and stated that the evidence does show it is a county road. Mr. Davis will prepare the proposed findings of fact and conclusions of law for the Board's review.

Adjournment.

It was moved by Commissioner Livingston, seconded by Commissioner Tilden and unanimously carried to adjourn the meeting.

Loren Grosskopf, Chairman

Joseph E. Tilden, Vice Chairman

Bucky Hall, Commissioner

Lee Livingston, Commissioner

Tim A. French, Commissioner

Attest:

Jerri B. Torczon, County Clerk