

REGULAR MEETING of the PAINT CREEK TRAILWAYS COMMISSION

Held at the Paint Creek Cider Mill Building, 4480 Orion Road
Rochester, Oakland County, Michigan

CALL TO ORDER: The Tuesday December 20, 2011 meeting was called to order by Vice-Chairperson Gamage at 7:05 p.m.

Voting Members Present: Edward Peters, Steve Sage, Ravi Yalamanchi, Alice Young

Voting Alternates Present: Linda Gamage, Paul Miller, Martha Olijnyk

Non-Voting Alternates Present: Nathan Klomp

Village of Lake Orion Non-Voting Member Present: None

Voting Members Absent: Rock Blanchard, Richard Schultz, Kathy Thomas, Maryann Whitman

Alternates Absent: Mark Crane, Marc Edwards, Jeff Phillips

Others Present: John Makris, Attorney, Kristen Myers, Trail Manager. David Becker, Guest

APPROVAL OF AGENDA: Election of Officers will be postponed until the January meeting as Chairperson Blanchard is not in attendance tonight.

MOTION by Miller, supported by Young, *Moved*, to approve the December 20, 2011 agenda as amended.

Ayes: All Nays: None

MOTION CARRIED.

PUBLIC COMMENT: None

CONSENT AGENDA:

- a. Minutes – November 15, 2011 Regular Meeting, approve and file
- b. Treasurers Report – November 2011, receive and file
- c. 2012 Meeting Schedule Resolution, approve

MOTION by Miller, supported by Sage, *Moved*, that the consent agenda be approved as presented.

Ayes: All Nays: None

MOTION CARRIED.

ORDINANCE SUBCOMMITTEE REPORT: Ms. Myers reported the subcommittee has met twice to review the ordinance discrepancies and suggested the Commission review new language relative to reckless behavior on the trail due to complaints about speeding bicyclists – if this is something the Commission wants to pursue. Handouts tonight include language on reckless behavior as well as a “catch-all” paragraph suggested for addition to the ordinances that would allow the Commission to waive or change something in the ordinance because of trail operations. This language has been reviewed by Mr. Makris. Other ordinance changes will be reviewed by the subcommittee at a future meeting and will be brought back to the Commission at one time. Mr. Makris commented he didn’t know if the subcommittee addressed penalties for certain issues to which the response was not yet. With regard to proposed waiver language, Mr. Makris said he would divide the suggestion into two parts in case the communities don’t want to adopt one or the other parts, and also if one part was considered to be an invalid delegation of authority by the

communities to the Commission. The first part is as written - that “nothing in this ordinance shall prevent employees, agents or designees of the Commission from engaging in activities in furtherance of trail operations”, and the second part is that “the Commission has the right to (is empowered to) waive, any ordinance (by duly adopted resolution of the Commission) (for a limited designated time or as related to an event)” – this would allow a methodology and a chance for a hearing with respect to any proposed change. Other suggested language is that the “Commission is authorized to issue rules and regulations, by duly adopted resolution, to supplement or enhance these ordinances and publish same for the public’s information and guidance, and such rules shall be enforceable as a part of these ordinances”. Mr. Makris also suggested that “the Commission is authorized to declare any part of the trailways property temporarily closed to the public in whole or in part for certain uses at any time as the Commission or its designee deems to be reasonably necessary”. By adopting this language as part of the ordinance, whatever limitations the designee would have to close the property would also be adopted as part of the rules. Mr. Makris also suggested preamble language to say that “authorizations granted for the Commission to act are not meant as a limitation for the Commission to act pursuant to the powers granted under the Intergovernmental Agreement or its founding chapter or its authority as owner of trailway property”.

With respect to the reckless behavior language, Mr. Makris feels there is a need to define reckless or careless behavior unless a general definition is found in each community’s ordinance. Mr. Makris has written a definition for reckless, but didn’t write one with respect to careless or making it equal to reckless – “it shall constitute reckless or careless behavior if such behavior may place trail users in danger of injury or in fear for their safety or for the safety of minors accompanying them.” If you are going to include both words in the ordinance you might have to consider what is reckless and what is careless. He has also provided suggested additional language for the reckless behavior ordinance, i.e., adding the words “including the density of trail use at the time” at the end of the first proposed sentence. Mr. Makris indicated that in general, persons found guilty of violating an ordinance face fines not exceeding \$500 and/or 90 days in jail or not exceeding \$100 or 90 days in jail, and he suggested the subcommittee review each community’s ordinances for their version. Another issue to be determined is whether the violations are going to be civil infractions or misdemeanors. Civil infractions are easier to prosecute because they are not criminal. Some municipalities use their disorderly person civil infraction to define some of the things the Commission is discussing. The subcommittee should review what the disorderly person ordinance covers. The attorneys who will be responsible for prosecuting these ordinances should review the proposed language. We would be interested in knowing their comments relative to ease of prosecution, whether they are comfortable with the ordinance language, and whether it is better to have it as a civil infraction offense or as a misdemeanor.

Commission comments include – might not support the wording “may place trail users in fear for their safety” because this means rather than the objective behavior of an individual being addressed, it’s a response to that behavior. We need to deal with the act itself, not how people feel about it. In response to the question of what the problems are on the trail, Ms. Myers said most often it has to do with user conflicts. Another change being looked is changing the trail hours to half-hour before sunrise to half-hour after sunset. Regarding the waiver language, it is thought that most municipalities would not agree to authorize the Commission to waive a part of the ordinance. Can’t the Commission pass rules for the trail that are binding and enforceable without being adopted by the communities? The Commission does not have the authority to pass ordinances, only to make suggestions for the community’s adoption. Mr. Makris indicated authorization to write the rules and who is going to enforce them – by an ordinance change, then they’ve become laws of the community. They can be administered and prosecuted. The

ordinance changes that are suggested should define things so it makes it easier to identify and prosecute. The key is going to be that the city attorney has to feel comfortable that they have something in their hands that someone can be charged under, and what level of proof would be necessary. Different kinds of violations have to be proven in different ways. The bottom line is that the Commission is trying to make it so that there is greater awareness of the importance of trail etiquette and to give authority something they can enforce. Mr. Makris suggested the subcommittee also look at the definition of reckless endangerment in state law. After discussion, it is the consensus of the Commission to look further into a possible reckless ordinance.

The subcommittee will meet again on January 14th and bring more information/suggested language back to the Commission at a later date.

TROUT UNLIMITED ANGLER ACCESS PROJECT & GRANT APPLICATION: Ms. Myers indicated she has been working with Jason Davis from the Clinton Valley Chapter of Trout Unlimited regarding potential projects along the trail. He has submitted a grant application for funding of three angler access points along the trail, something that is included in the current Master Plan. One project is to repair the damaged bridge 33.1 in Rochester Hills. Trout Unlimited will do all the work, and the MDEQ will have approval over the plans. This is something that the Commission wants to do. Ms. Myers wrote a letter of support for the project and suggested the Commission may want to consider paying for the \$250 MDEQ permit next year. Ms. Gamage commented that the Rochester Hills Art Project could possibly be an interpretative area explaining the trout stream in the area of the access project.

MOTION by Miller, supported by Young, *Moved*, that the Commission pay the \$250.00 MDEQ permit fee next year in conjunction with Trout Unlimited's proposed angler access project.

Ayes: Ayes Nays: None

MOTION CARRIED.

PAINT CREEK TRAIL SNOWFEST – February 4, 2012: Ms. Myers reported the snowfest event will be reorganized into something other than a sleigh ride open to the public. The health department requirements are extensive, even if only serving hot chocolate and there are unanswered questions with regard to the sleigh. What is proposed is a private, invitation only style event, for the Commission, some local elected officials, Dinosaur Hill and donors to the Friends Group to see if a sleigh ride event is something to be considered for a public forum next year. As part of some snowfest activities at the Cider Mill, Gallagher to Adams could be groomed for anyone wishing to cross country ski for a couple hours in a "winter appreciation" event on the trail. Feedback will be solicited from the attendees.

SB 499 UPDATE & ATTORNEY OPINION: Ms. Myers reported she has had contact with Senator Marleau's office relative to this bill. The Commission's concerns have been relayed, and language has been added to the bill that they thought would protect the trail. Mr. Makris has reviewed the language and his concerns have been sent to Mr. Marleau's office. The concern regarding this bill is about losing license fees and giving utilities the right, on state owned land, to put their utilities where they want without having to pay to do so. The trail was purchased with State dollars, so the concern is the definition of state owned land. Mr. Makris stated, being an attorney for a regulated industry - the railroad - this bill is upsetting, e.g., authorization granted within 45 days of the application and that possible erosion is not addressed. This bill does not only address underground utilities, but also utilities attached to existing above ground structures. This could affect the trail if state land is adjacent to our property and they are running underground or above ground utilities. The Commission charges more fees to DTE or ITC for additional wires to an existing tower. Mr. Makris feels this bill is granting rights over a valuable state commodity for almost free to a private enterprise, even if it's a non-profit entity. There is no control over where it goes, no method for setting up regulations. The Rails-to-Trail and Michigan

Trailways groups are against the bill. It is suggested the Commission write a letter against this senate bill.

MOTION by Yalamanchi, supported by Young, *Moved*, that the Commission write a resolution of opposition and submit a letter outlining our opposition to SB 499.

Ayes: All Nays: None

MOTION CARRIED.

SUMMARY OF EVENTS & ACCOMPLISHMENTS: Ms. Myers has compiled a summary of events and accomplishments. This report is compiled in December and sent to the communities in January of each year. It was suggested that under the February events, the presentations given to each community by Ms. Myers be listed by the actual presentation dates. Action on SB 499 should be added to the December accomplishments. This report should be posted on the website and/or the facebook account.

2011 PER DIEM REPORT: Ms. Myers reported the 2011 per diems at a total of 115 meeting attendances for a total of \$4,025.00. Thanks to everyone for their continued support and dedication to this Commission and for their high attendance.

MOTION by Miller, supported by Peters, *Moved*, to accept and approve the per diem report in the amount at \$4,025.00 and incorporate this amount into the invoice total for approval tonight.

Ayes: All Nays: None

MOTION CARRIED.

RECESS – 8:23 p.m. to 8:40 p.m.

APPROVAL OF INVOICES: Ms. Myers presented the invoices in the amount of \$14,344.52. In addition to the normal monthly expenses, this amount includes the per diem amount of \$4,025.00, 4th quarter costs for shared office space/utilities with Oakland Township Parks, 2011 charges for postage and phone, 160 hours of Oakland County mounted patrol, one case of dog waste bags, Mr. Makris' 1st quarter 2012 legal retainer fee, and Ms. Myers' 4th quarter 2011 mileage reimbursement.

MOTION by Yalamanchi, supported by Young, *Moved*, that the invoices presented for payment are approved in the amount of \$14,344.52 and orders be drawn for payment.

Ayes: All Nays: None

2011 FINAL AMENDED BUDGET: Ms. Myers prepared and distributed the final amended 2010 budget for the Commission's approval in the amount of \$92,041.00. Excess per diem amount of \$175 will be transferred to fund balance. Under the phase 3 art project, the budgeted \$1,500 was not spent this year and it is proposed this be carried over to 2012 in addition to another \$1,500 for a total of \$3,000. Trail Improvement project in South Rochester, there is \$500 designated this year and it is recommended this be carried over plus an additional \$500 for a total of \$1,000 for 2012. Ms. Myers is also suggesting \$3,000 be set aside for brochures. For the Polly Ann Trail Connection, \$500 was designated this year, and it is recommended this amount be carried over and an additional \$500 be put aside for a total of \$1,000. Master Plan preparation needs to begin in the beginning of 2013 and \$1,000 should be set aside at the end of 2012 for this effort. The fund balance is now at \$30,947 for 2011.

MOTION by Yalamanchi, supported by Young, *Moved*, to approve the amendments to the 2010 budget as presented, for a final budget amount of \$92,041.00.

Ayes: All Nays: None

MOTION CARRIED.

MANAGER'S REPORT: Nothing in addition to the written report other than the Township is closed next week. Ms. Myers is working tomorrow, and won't be back in the office until January 3rd.

ATTORNEY'S REPORT: Mr. Makris reported with respect to cleaning up the lawsuit, the consent judgments and the defaults have been filed, signed and entered. The Solaronics documents were not found, so Mr. Gaber has been informed to refile these documents; this should be in process. Mr. Makris will contact him by the end of the week. There is a question about one of the defendants, and Mr. Makris will check all the paperwork to make sure this has been filed. The Solaronics issue will be the last one filed and will close out all issues with this case. All the defendants will receive a copy of their judgments via first class mail. Another issue is an encroachment situation by an individual in Oakland Township who apparently is a pastor of a Covenant Church – emails, phone calls and a priority letter request have gone unanswered. Mr. Makris then faxed a notice to this individual and received a call from a boy scout camp asking why they received the fax. In this instance, numerous healthy White Pines trees were removed and within 60-75 feet of trail property, trees and shrubs have been removed. There is an 18 foot wide path from the trail to his property that has been cleared. This individual has been seen on a 4-wheeler on his property. A tree service must have had to complete this work and now there is a 12 foot high pile of logs on trail property. This individual was not part of the lawsuit, but his neighbors were. He must have known this is trail property, as the cattle fence is still in place. It is suggested a police report be filed and let them investigate. This is against the natural features ordinance.

MOTION by Olijnyk, supported by Young, *Moved*, that the Commission file a complaint with the authorities, send a letter to the property owner at the beginning of the year, and start gathering inventory information and the associated value of the destroyed trees.

Ayes: All Nays: None

MOTION CARRIED.

COMMISSIONER REPORTS: Happy Holidays to all.

ADJOURNMENT:

Upon **MOTION** by Olijnyk, supported by Young, *Moved*, the Regular Meeting was adjourned at 9:20 p.m.

Ayes: All Nays: None

MOTION CARRIED.

NEXT MEETING: January 17, 2012 at 7:00 p.m. at the Paint Creek Cider Mill

Respectfully submitted,

KRISTEN MYERS, Trail Manager

EDWARD PETERS, Trailways Secretary