

SPECIAL MEETING of the PAINT CREEK TRAILWAYS COMMISSION

Held at the Oakland Township Municipal Building,
Rochester, Oakland County, Michigan

CALL TO ORDER: The Tuesday March 31, 2009 special meeting was called to order by Chair Blanchard at 7:05 p.m.

Voting Members Present: David Becker, Rock Blanchard, Marc Edwards, Edward Peters, Maryann Whitman, Alice Young

Voting Alternates Present: Linda Gamage, Paul Miller

Non-Voting Alternates Present: Jeff Matis, Martha Olijnyk

Non-Voting Members Present: None

Voting Members Absent: Richard Schultz, Ravi Yalamanchi

Alternates Absent: Penny Shults, Kathy Thomas, Michael Webber

Others Present: John Makris, Attorney, Kristen Myers, Trail Manager

APPROVAL OF AGENDA:

MOTION by Young, supported by Peters, *Moved*, to approve the March 31, 2009 agenda as presented.

Ayes: All Nays: None

MOTION CARRIED.

PUBLIC COMMENT: None

INFORMATION AND PUBLIC DISCUSSION: Quiet Title Action: Paint Creek Trailways:

Chairman Blanchard thanked everyone for being here, asked that everyone please sign in so we have contact information and asked individuals wishing to speak to fill out a speaker card and hand it to the recording secretary. This meeting is about general information regarding the Quiet Title action, and the Commission will be unable to address each individual situation tonight. However meetings will be scheduled with property owners to have these discussions. The Chairman explained the Commission struggled with this situation and did not want to proceed this way, but felt the taxpayer's property must be protected. Mr. Blanchard introduced Commissioner Olijnyk, an Oakland Township resident and Citizen Alternate Representative to the Trailways Commission and the Chairperson of the Encroachment Subcommittee.

Ms. Olijnyk will give a brief history of the trail and the boundary survey, summarize the Commission's responsibilities and explain why this informational meeting was scheduled in light of the court case that prompted the quiet title action. Hopefully the information will address your concerns, answer your questions and start a dialog with adjacent property owners. The Commission regrets that it is meeting some of the residents for the first time under these circumstances. The last thing the Commission wanted to do was to have to file a lawsuit. The Commission wanted to address these encroachment matters in a slow and methodical way, setting up a way to contact the residents for discussion before anything went further, but the Commission

felt it had to act very quickly once it found out about the change in Michigan State law as it applies to property issues.

The Paint Creek Trail is a rails-to-trail project – originally the land on which it sits was a Penn Central Railroad right of way. The trail runs from Rochester to the Village of Lake Orion. What might not be known is how wide the trail property actually is. The trail isn't just the eight-foot wide limestone path, the railroad right of way can go up to 160 feet wide, which means if you are walking on the trail, 80 feet on one side and 80 feet on the other side is right of way. When the railroad right of way was transferred to the Commission, it acquired the land on either side of what is seen as the limestone trail. This is important because adjacent property owners may not know exactly how wide the Commission's property lines are. The Commission was formed under state law through an intergovernmental agreement between the member communities. Each community assigns representatives to serve on the Commission, and their job is to oversee and manage the trail, and protect it for the public trust, as the Commission actually owns the property on which the trail sits and associated parking areas. We act as the custodian and stewards of the trail for the public relative to the ecology and natural areas surrounding the trail. Funding comes from the member communities, licenses from several different utilities and businesses along the trail, as well as individual donations. The member communities also assist with providing maintenance through their Parks and Recreation Department, because the Commission does not have their own staff to maintain the trail. The Commission applied for a grant offered through federal, state and local agencies for projects on the trail. This is important as the granting agency asked for a copy of the trail boundary survey and legal description. This information was provided, the Michigan Natural Resources Trust Fund provided the grant, but indicated the survey information was too old and requested that an updated survey be completed for the three areas receiving the grant. Based on this request and the fact that future grants would be applied for, the Commission decided to hire a company to complete an updated survey and legal descriptions for the entire trail. In 2004 the Commission began budgeting for completing a survey of the whole trail property. The Commission hired Nowak and Fraus to do the survey, which began in early 2007 and continued into 2008. During this survey work, a number of instances were noted in which items from other people's property were actually on trail property. These included fences, bridges, steps, pathways, trellises, decks, and cutting or removing vegetation.

When the survey was completed, the Commission determined that these encroachment issues needed to be addressed. In late 2008, the Commission began gathering information and categorizing noted encroachments. A subcommittee was formed in January 2009 to address the encroachment issue. This subcommittee met on February 9th to start writing the policy to address the encroachments. The subcommittee wanted to identify these issues to the neighbors by letter or some sort of contact letting them know what we found and to figure out a way to handle the situation. A second meeting was going to be scheduled in March, but between these two meetings a Court of Appeals decision in the case of Mason vs. City of Menominee was decided on February 26th. This case caused us to speed up the time line on the encroachment issue, as it told us that we needed to act immediately to establish our property lines vis-à-vis our neighbors. Menominee lost some property because they didn't act right away. Because we are stewards for the trail and hold the land in trust for the public, if we didn't act right away, the Commission wouldn't be doing our duty to the public. The Commission realized it may cause hard feelings, but felt for the good of the entire trail, the quiet title action needed to happen. Hopefully, these issues can be cooperatively worked out between all affected parties. No one wants to spend a lot of money on attorneys to fight this. The Commission does not want to fight, but is hoping by holding this meeting and explaining why we did what we did in a time frame that did not allow contacting the residents first, that any issues can be worked out. Ms. Olijnyk thanked the

audience for their attention and indicated Mr. John Makris, the Commission's attorney and representatives from Nowak and Fraus, the survey company, are present to answer any questions.

Mr. Makris reiterated that it was never the Commission's intention to proceed with the resolution of boundaries or encroachment issues in this manner. However, the impetus for doing this was the Mason vs. Menominee court case. When information about the case became known, Mr. Makris contacted the City Attorney for Menominee, talking at length about the case and what happened to them. Mr. Makris summarized the Menominee border line dispute case for the audience. The case favored the property owner because they had filed first. According to the case decision, when municipal corporations were sued, they didn't have certain protections; municipalities had to bring an action first in order to be protected against people who claimed land that was actually community land. The City of Menominee has decided to appeal the decision to the Michigan Supreme Court and the date to submit paperwork is April 9th. Other communities may decide to join this lawsuit to express their issues, and they may - as there are 88 counties in this State and thousands of communities that can be affected by this decision if it remains as is. The attorneys for Menominee feel there is a good chance to win the appeal in Supreme Court, as they feel there are issues the Court of Appeals failed to adequately address. Mr. Makris explained the Commission tried to be very careful in presenting the packet of information to the property owners, including a cover sheet explaining what has happened. The quiet title lawsuit is in very simple language claiming the Commission has a title to the subject property based on the survey and the title description. The encroachments, as well as the property owners are required to be listed in the lawsuit. The defendants in the case are identified as "1001 Services, Inc." so as no one property owner individually became the lead defendant of the lawsuit. In the request for relief, we are asking the court and property owners to acknowledge that the trail survey line and legal description is the correct boundary regardless of fence or tree lines, etc. Once that is determined, the Commission asks further that the court acknowledge the Commission has a right to ask that encroachments be removed, if we want them removed. There are certain instances where encroachments are consistent with the trail purpose and/or use, and each issue will be reviewed individually. Mr. Makris indicated that if some property owners have a survey that disputes property lines, this needs to be reconciled. Please bring this forward to the Commission staff to ascertain if there is a difference. If further work is needed, the surveyor may need to review the paperwork to make a determination. The Commission will try, throughout this process, to resolve any issues with every property owner.

The floor was opened for public comment.

Rick Rush Jr., co-owner of Solaronics, 704 Woodward, Rochester, MI, came forward and stated his company has been in Rochester since 1971, the fence was installed in 1973 and has been there ever since. If the fence had to be moved, the company would be put out of business because they would not be able to get into their shipping department. There is enough trouble in today's times trying to make a living. He commented that if the Commission is funded by the municipal tax dollars, and he pays property taxes, basically he is paying to sue himself. He is asking for a solution to the problem.

John Gaber, 380 N. Old Woodward, Ste. #300, Birmingham, MI, came forward and indicated he is the attorney representing Solaronics. The reason he is present is because this is a dire situation for Solaronics, as the allegations indicate they must remove their fence and quit using their access drive to the receiving dock, which would essentially put them out of business. This is the only access point to their receiving dock. Mr. Gaber is hopeful something can be worked out with the Commission, but is concerned about what type of resolution would work and what the cost would be to his client.

Jeanie Smotherman, 193 Glanworth, Lake Orion, MI, came forward and asked where the original survey is from back when the land was transferred or purchased.

Mr. Makris explained there was no survey at that time – the railroad had what is called valmaps or valuation maps, and our surveyors began their boundary survey using these original railroad maps that go back to the late 1800's. The markers that surveyors used at that time are still on site, were found by our surveyors and used to develop the current boundary survey.

Ms. Smotherman asked about the 21 day limit to file notice she disagrees with this information, and what she is supposed to do.

Mr. Makris explained that ordinarily within a 21 day limit in an aggressive lawsuit, if you didn't respond, a default would be filed against the property owner. This will not happen in this case because the Commission is not going to default anyone in the 21 days. Mr. Makris indicated he will contact anyone the Commission has not heard from to remind them there is a lawsuit and if they wish to contest the case to come forward at that time.

Ms. Smotherman then asked what Mr. Makris' costs are going to be for this lawsuit as the taxpayers will be paying this bill. The answer was that it is virtually impossible to predict what the cost will be, because the number of people contesting the lawsuit is unknown. A lot of the groundwork will be done by staff and Commission volunteers. Attorney fees and costs will be kept to a minimum.

Mr. David Morrison, 4715 Forest Ridge Ct., Oakland Township, MI, came forward asked the surveyors to explain the scope of a boundary survey.

Mr. Alex Nicolaescu, Nowak and Fraus, explained that the boundary survey they completed was primarily based on the route survey originally furnished by the railroad. There are two types of surveys – the boundary survey normally shows just the boundary, and the improvement survey, which shows all the permanent structures and features that were found. Not all encroachments were indicated on the survey, but were found during visual inspections of the trail. Mr. Morrison asked how the property owners would know about encroachments if they are not shown on the survey. It was explained there are markers - irons and monuments, in the field showing the actual boundaries. The trail property is owned by the Commission, it is not an easement on the adjacent property owners' land.

Ms. Shanna Marcelo, 800 Goldengate, Lake Orion, MI, came forward and asked what she is supposed to do next, wait for a phone call or call someone in particular.

Mr. Makris indicated the best thing to do is make sure your name and address is on the sign-up sheet in the back of the room. Anyone who is on the list will be contacted. A phone call can also be placed to Ms. Myers at the Trailways office, or to Mr. Makris himself.

Mr. Don Campbell, 1355 Kern Rd., Oakland Township, MI, came forward and asked if other trails have done anything in light of the lawsuit.

Mr. Makris explained we are the first Commission to act on the lawsuit. This case affects anyone with public land, and a lot of communities do not have a current survey to even know how to define the encroachments. For many trails and communities, this may become a big issue. Fortunately many trails are owned by the State, and they don't have the same issues – they are a

different part of the statute not interpreted by this case against the public entity. There is a link on the Trailway website to the actual case, and Mr. Makris encouraged everyone to read the case.

Mr. Campbell then asked if Nowak and Fraus verified their findings with the County's records. Yes, all records from Oakland County have been studied, and are in conformance with the trail boundary survey. Mr. Campbell then asked what else he needed to do.

Mr. Makris indicated if he wished to sign the summons acknowledgement of receiving the paperwork, please do so, and send it to the Trailway office or Mr. Makris' office – then we know you have received the papers.

Ms. Janet McCormick, 1930 W. Gunn Rd., Rochester, MI, came forward and indicated some property owners did have surveys before fences were put in, and asked what the process is to move forward at this point. Should she pay for another survey to be completed?

Mr. Makris indicated that in order to keep the cost down for reviewing this, he recommends taking the survey into the Trailway office and compare it with our boundary to see if it can be reconciled. If it can't be reconciled, it will have to be addressed with our surveyor.

Mr. Tom Campbell, 336 Creeks Edge, Lake Orion, MI, came forward and indicated he purchased his home in 1999, saw where the survey was and it was clearly on the other side of the fence. He believes the fence was moved and relocated when the sewers were laid. Now that the fence is on trail property, who will maintain this fence. It is a nuisance and who will take liability.

Mr. Makris indicated most people won't want to do anything with the fence – if it presents a danger, please let's work together and get rid of it. If it is on trail property, the member community will have to work out how to resolve any kind of safety issue.

Ms. Linda Schweitzer, 1880 N. Livernois, Rochester Hills, MI, came forward and asked about the mowing issue as she was cited for probably mowing some of the trail property. She asked if she should continue mowing because if she lets it go, the weed seeds go into her yard.

Ms. Whitman explained what needs to be realized is that the work of the Trailway is to restore the native vegetation along the trail, so some of the weeds being talked about may very well be grasses that are needed. Ms. Schweitzer indicated she is an environmental scientist and the grass is such that no one would want it, and if the trail wanted to do a burn or prairie restoration, she would welcome it. Should mowing be continued? This is a situation where the Commission would be glad to sit down and talk on an individual basis to resolve the issue.

Mr. Charles Bartkus, 1430 N. Livernois, Rochester Hills, MI, came forward indicating he was cited for an old wire fence – and if the Commission wants to remove the fence on their property, he has no objections. He has a survey from when he purchased the property and does not see any stake information near his property corners – he is curious to see what the surveyors boundary placement is in relation to his placement.

Mr. Makris stated this Mr. Bartkus' survey needs to be reconciled with the Trail boundary survey.

No more cards have been received for public comment, but if anyone wishes to speak, please come forward. No one else came forward.

Chairman Blanchard thanked everyone for being here this evening and reiterated that the Commission did not want to proceed in this way – we are here to protect the trail and the communities and will work with each individual to work out all issues.

Vice-Chairperson Becker thanked everyone for being in attendance, and stated he feels terrible about the whole process, but to protect public property it had to be done. Mr. Becker stated that this Commission would never do anything to jeopardize Solaronics and will work to resolve any issues.

A recess was called at 8:40 p.m.

The meeting reconvened at 8:46 p.m.

MANAGER'S REPORT: Ms. Myers said the latest inspection report was emailed to all members, and there are no major issues at this time.

ATTORNEY'S REPORT: No report given.

COMMISSIONER REPORTS: Mr. Peters reported a tornado siren warning will occur at 11:30 tomorrow.

NEXT MEETING: April 21, 2009 at 7:00 p.m.

ADJOURNMENT:

MOTION by Becker, supported by Young, *Moved*, that the March 31, 2009 Special Meeting be adjourned at 8:48 p.m.

Ayes: All Nays: None

MOTION CARRIED.

Respectfully submitted,

KRISTEN MYERS, Trail Manager

EDWARD PETERS, Trailways Secretary