

**REGULAR MEETING of the PAINT CREEK TRAILWAYS COMMISSION**  
Held at the Rochester Municipal Offices, 400 Sixth Street  
Rochester, Oakland County, Michigan

**CALL TO ORDER:** The Tuesday July 20, 2010 meeting was called to order by Chair Blanchard at 7:00 p.m.

**Voting Members Present:** Rock Blanchard, Ben Giovanelli, Edward Peters, Richard Schultz, Kathy Thomas, Alice Young

**Voting Alternates Present:** Nathan Klomp (*after 7:05 p.m.*), Paul Miller (*until 7:05 p.m.*), Martha Olijnyk

**Non-Voting Alternates Present:** Linda Gamage

**Village of Lake Orion Non-Voting Member Present:** None

**Voting Members Absent:** Maryann Whitman, Ravi Yalamanchi

**Alternates Absent:** Marc Edwards, Jeff Matis, Jeff Phillips, Penny Shults

**Others Present:** John Makris, Attorney (*enter 7:20 p.m.*), Kristen Myers, Trail Manager

**APPROVAL OF AGENDA:** Add Encroachment Pathway before Manager's Report.

**MOTION** by Schultz, supported by Thomas, ***Moved***, to approve the July 20, 2010 agenda as amended.

Ayes: All      Nays: None

**MOTION CARRIED.**

**PUBLIC COMMENT:** None

**CONSENT AGENDA:**

- a. Minutes – June 15, 2010 Regular Meeting, approve and file
- b. Treasurers Report – June 2010, receive and file
- c. Temporary Permit Request – AdvoKate Run/Walk – August 7, 2010, approve
- d. Temporary Permit Request - Curamus Terram – September 18, 2010, approve
- e. Temporary Permit Request – Brooksie Way – October 3, 2010, approve

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

Ayes: All      Nays: None

**MOTION CARRIED.**

**APPROVAL OF INVOICES:** Ms. Myers presented the invoices in the amount of \$3,554.33. This amount includes the Commission office's 2<sup>nd</sup> quarter shared costs for copying and postage, 48 hours of Mounted Patrol Services, and Mr. Makris' monthly invoice for professional services associated with litigation. Fund balance is estimated at \$38,000.

**MOTION** by Schultz, supported by Olijnyk, ***Moved***, that the invoices presented for payment are approved in the amount of \$3,554.33 and orders be drawn for payment.

Ayes: All      Nays: None

**MOTION CARRIED.**

**PERMIT FEE STRUCTURE FOR 2011:** Per the Commission's request, Ms. Myers drafted a permit fee structure. If adopted, the policy should be in effect for 2011 and beyond. Any changes will be incorporated into the policy and brought back to the Commission for final approval. The proposed fees are \$0 for member units or affiliated government/park agencies, \$10 for official non-profit organizations having a 501 (c) 3 status, and \$30 for for-profit or unofficial non-profit organizations (without a 501 (c) 3 status). It is advantageous to have a policy in place as many discussions have occurred relative to when to waive the fee. Annually, approximately two permits are requested by member units, two to three permits are requested by non-profit organizations and two to three permits are requested by -unofficial non-profit organizations. Perhaps the for-profit fee could be slightly increased to cover the Trail Manager's time and effort toward the permitting process. A short discussion ensued relative to the proposed fees and the fact that the non-profit fee is proposed to be decreased from \$25 to \$10. After discussion it is the consensus to approve the proposed permit fee structure as presented.

**MOTION** by Giovanelli, supported by Thomas, *Moved*, that the Commission supports the proposed fee structure as presented to begin in 2011.

Ayes: All, except for

Nays: Blanchard

**MOTION CARRIED.**

**LABOR DAY BRIDGE WALK PURCHASE AUTHORIZATION:** Ms. Myers explained that in the past the Commission has purchased promotional items to give away at this event, and provided information on three items for consideration. There is a compass/keychain/carabiner (tying in with a hiking theme), a pedometer (quality does not impress the Manager), and an electronics neck case to carry a cell phone or MP3. The suggestion was made to find sponsors for the event. Ms. Myers indicated she has secured one \$250 sponsor, and there is \$750 in the budget for this event. Mr. Giovanelli offered to check with his contacts for wholesale prices. After a short discussion, it is the consensus of the Commission to purchase the keychain/carabiner item.

**MOTION** by Olijnyk, supported by Giovanelli, *Moved*, to approve spending up to \$550 for the purchase of the keychain/carabiner lanyards as the promotional item for this year's Labor Day Bridge Walk event.

Ayes: All      Nays: None

**MOTION CARRIED.**

**OAK ROUTES MAP SPONSORSHIP:** Ms. Myers explained Oakland County is making plans to print new Oak Routes maps. In 2009, the Commission sponsored \$750 toward the effort. It is deemed appropriate for the Commission to sponsor the maps as it is a promotion/marketing tool for the trail. A donation of \$500 - \$999 is a "pathfinder" designation and will secure the trail logo on the back outside of the folded map, the same spot the trail had on the previous brochure. There is \$1,000 left in the National Trails Day budget and \$300 extra in the auditing budget that could be used.

**MOTION** by Schultz, supported by Olijnyk, *Moved*, to approve spending \$500 to sponsor the next Oak Routes map printing.

Ayes: All      Nays: None

**MOTION CARRIED.**

**VOLUNTEER LIABILITY FOR MINORS, IMPLICATIONS OF WOODMAN v KERA (MI SUPREME COURT):** Ms. Myers indicated Mr. Makris contacted her relative to this decision as the issue was whether a pre-injury waiver signed by a parent on behalf of his minor child is enforceable under the common law. The court decided that absent special circumstances, a parent has no authority to bind his child by contract (a release of liability/waiver is considered a contract). Ms. Myers contacted the insurance carrier for an opinion, and they indicated the trail

should continue using the volunteer waiver as it can act as a deterrent to filing a claim. The carrier also indicated that the decision does not affect trail coverage with MMRMA, as the use of waivers in the past was always suggested in attempt to keep losses to a minimum. The MMRMA committee will be contacting legislators to attempt to get some relief and/or clarifying language passed. Mr. Makris suggested that what might work is a type of contract with the parent, whereby the parent indemnifies the Commission – in the event a minor that the parent is representing is injured on the trail from any activity, the parent will indemnify the trail for any claim the minor makes and will reimburse the trail for any costs and legal fees in any settlement made to the minor. Mr. Makris will review the trail's current waiver language, review the court case and return to the Commission next month with suggested language for a revised waiver including the indemnification paragraph.

**ENCROACHMENT PATHWAY:** Ms. Myers stated this issue developed over the weekend. Photographs of the encroachment, as well as an excerpt from Trailway minutes when this subdivision appeared in 2006 inquiring about a possible trail connection through their commons area to the trail, was also provided to the members. One of the concerns at that time was-it's OK to pursue a connection through their property, but what happens when this path got to trail right-of-way. A committee was formed and tried to meet with the owners, but the idea never went anywhere. A couple months ago Ms. Myers received a call from Mr. Thomas Zguris, who lives in the subject subdivision indicating they were getting ready to make plans in the summer to put a pathway through to the trail. He wanted to know if they could have access from the trail for construction vehicles to get to their property because of the topography. Ms. Myers spoke at length with the gentleman explaining if they needed to use the trail as an access point, a meeting to discuss contractor liability and other trail requirements was necessary. It was made clear no path would be constructed on Trail property, no work was to be done on trail property without this meeting and they indicated no work would be done without finalizing the details. Bike Patroller Moutrie noticed the trail over the weekend and notified the Manager. Ms. Myers went to the site, did not find vehicle tire tracks, but verified clear-cutting seven feet from the edge of the trail with a path four-five feet wide lined with compacted limestone four inches thick starting south of Dutton at approximately mile marker 33.2 and continuing 40 feet on the right-of-way. It encroaches onto trail property approximately 42 feet. Some drainage tubes have been installed, but it is not known whether this is sufficient. The path winds to a footbridge that crosses the creek – it is not known if they asked for or received permission to cross the creek, even though the subdivision indicated they would work with the DEQ and the City of Rochester Hills on the issue. Ms. Myers was curious if there was a gate in place to keep trail users off this path, because it looks like something the Trailways could have built and clearly invites people off the trail to this pathway. There is no gate.

Although trail connectivity is a goal, it is disheartening what this subdivision so blatantly did, especially in light of the current litigation. A letter should be sent to the subdivision association indicating we noticed their encroachment and ask them to meet with the Commission to discuss how this will be handled/removed. Overall, it is a good thing that there is one path to the trail that serves a number of homes, but it is upsetting they went ahead and completed the work without finalizing details with the Commission when they knew they had to follow this process but chose not to. . Mr. Makris explained one of the problems is we've had situations of individuals asking forgiveness after they have done things and this is a very bad practice. He cited examples. The Commission came down hard on others with encroachment issues, and this situation should be dealt with the same way. The question was asked if the property owners had met with the Commission about the proposed work, could it have been completed? Mr. Makris explained that when communities want to place sewer lines or install overhead wires – they would be issued a license, which allows the Commission to provide some control or supervision over how and

where the work will be done and how long they have permission for. The license may be renewable, but that is the Commission's option, so if they do something wrong now or in the future, the license can be revoked. There are many issues with this encroachment situation – they did not follow the process by contacting the Commission prior to completing the work and they may not have contacted the DEQ or the City of Rochester Hills.

**MOTION** by Giovanelli, supported by Young, *Moved*, that the Commission directs our attorney to write a letter to each property owner and the Subdivision Homeowner's Association, notifying them that we are aware of their encroachment on trail property, request that the encroachment be removed within 21 days and the property restored to previous conditions, and if not removed and restored, they are requested to appear at the next Commission meeting to show cause why a lawsuit for trespass and damages should not be pursued. The property owners must contact Ms. Myers to arrange for trail access, coordination of work and any necessary approvals.  
Ayes: All      Nays: None      **MOTION CARRIED.**

**MANAGER'S REPORT:** In addition to the written report, Ms. Myers was notified that the water gauge Building near Rudd's Mill in Orion Township is scheduled for demolition. Information was provided to the members relative to an accident on Oakland Township's segment of the trail involving a dog and bikers that happened about 100 feet from Patroller Moutrie; photographs were taken of the site to ensure no trail abnormalities existed that could be in question. The initial meeting of the Friends Group will occur on July 22<sup>nd</sup> at 7:00 p.m. at the Cider Mill. Ms. Myers is scheduled to be interviewed by CMN on July 27<sup>th</sup> relative to the trail.

**ATTORNEY'S REPORT:** Mr. Makris indicated he was contacted by an individual who has an art gallery and is insistent that she should have a right to advertise her business along the trail. She uses the Cider Mill's directional signs on the trail as an example. Mr. Makris explained the Commission does not want advertising on the trail, and that the Cider Mill provides restroom facilities for trail users.

**COMMISSIONER REPORTS:** Ms. Olijnyk indicated she was contacted by artist Tom Cameron who indicated the Commission may want to use his services to develop a new T-shirt or a poster as a potential fund-raiser. The Commission may want to look into this, as the T-shirts are pretty dated. She will follow up with him. It was also suggested that merchandise for sale should be put on the website. Everyone was encouraged to attend the Friends Meeting on the 22<sup>nd</sup>. Ms. Young was thanked for her assistance in securing the 501(c)3 status for the Friends Group.

**ADJOURNMENT OF REGULAR MEETING TO ENTER INTO EXECUTIVE SESSION TO DISCUSS LITIGATION:**

**MOTION** by Giovanelli, supported by Schultz, *Moved*, to adjourn the Regular Meeting at 8:35 p.m. and enter into Executive Session.  
Ayes: Blanchard, Giovanelli, Klomp, Olijnyk, Peters, Schultz, Thomas, Young  
Nays: None      **MOTION CARRIED.**

**NEXT MEETING: August 17, 2010 at 7:00 p.m.**

Respectfully submitted,

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KRISTEN MYERS, Trail Manager

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EDWARD PETERS, Trailways Secretary