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REGULAR MEETING of the PAINT CREEK TRAILWAYS COMMISSION
City of Rochester Municipal Offices
400 Sixth Street, Rochester, Michigan 48307

CALL TO ORDER: The Tuesday, April 17, 2018 meeting was called to order by Chairperson Becker at 7:00 p.m.

Voting Members Present: Rock Blanchard, Susan Bowyer, Frank Ferriolo, Jeff Stout

Voting Alternates Present: David Becker, Robin Buxar

Non-Voting Alternates Present: Lynn Loebis, Jenny McCardell

Village of Lake Orion Non-Voting Member Present: Brad Mathisen

Voting Members Absent: Linda Gamage, Kim Russell, Donni Steele, Hank Van Agen

Alternates Absent: Chris Barnett, Ben Giovanelli, Chris Hagen, Martha Olijnyk

Village of Lake Orion Non-Voting Alternate Absent: Shauna Brown

Others Present: Kristen Myers, Trail Manager, Chris Gray, Assistant Trail Manager, Sandi DiSipio, Recording Secretary

PLEDGE OF ALLEGIANCE: All rose and recited the Pledge.

APPROVAL OF AGENDA:

MOTION by Blanchard, seconded by Bowyer, ***Moved***, to approve the April 17, 2018 agenda as presented.

Ayes: All Nays: None

MOTION CARRIED.

PUBLIC COMMENT: No public comment was heard.

CONSENT AGENDA:

a. Minutes – March 20, 2018 Regular Meeting, approve and file

b. Treasurers Report – March 2018, receive and file

A one word change to the minutes was suggested - they will be administratively corrected.

MOTION by Bowyer, seconded by Stout, ***Moved***, to approve the Consent Agenda as presented.

Ayes: All Nays: None

MOTION CARRIED.

APPROVAL OF INVOICES: Ms. Myers presented the invoices in the amount of \$8,650.00. There is a correction to the invoices – Mannik Smith Group amount should be \$3,860.00 rather than \$4,989.50. This item will be discussed later so it is up to the Commission whether to wait until that discussion to approve all the invoices. The Chair suggested moving ahead now knowing the Commission can always reconsider the motion. The Commission agreed. In addition to the recorder's monthly fee, this amount includes Mannik Smith Group's invoice for Professional Services Design Engineering Bridge 33.7 Renovation, Addison Tree Service for the Bridge 33.7 tree removal, and the replacement of three per diem checks to the City of Rochester

Hills to replace the original misplaced checks. Estimated unrestricted fund balance is approximately \$100,000.

MOTION by Blanchard, supported by Stout, *Moved*, that the invoices presented for payment are approved in the amount of \$8,650.00 and orders be drawn for payment.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION & APPROVAL: Encroachment Ad Hoc Committee Recommendations: The recommendations were handed out tonight. Ms. Myers thanked the Committee - Dr. Bowyer, Mr. Stout and Mr. Van Agen, who worked on the policy, application process and recommendations regarding the two encroachments the Commission discussed in January. There was a question by one of the homeowners regarding property lines. He felt that his property line was 10 feet to the edge of the trail. With the help of Oakland County, Ms. Myers provided information showing the right-of-way distance for the parcels on the west side of the trail, there is a minimum of 56 feet from the center of the trail to the property line. She also provided the page from the original survey that was done, and the parcel in question is highlighted in yellow, which also shows 100 feet of trail right-of-way. If the homeowner feels differently, he probably will have to hire a surveyor and provide that information to the Commission. The Encroachment committee has been working on an application for a Limited Use Permit for Private Access to the Paint Creek Trail and recommendations for the two properties. Dr. Bowyer explained the committee realized there is no step between someone trying to do something on the trail and the Commission granting the use permit, which would be an application for the permit. What was needed was something that told the homeowners, that there are occasions the Committee would permit something to come on the trail but it would have to meet certain specifications. The homeowner would have to show a site plan of what it would look like and what they were trying to build, including materials. The committee would review the application and eventually bring it to the Commission for final approval before the owner would be granted the permit. Ms. Myers added the current permits can be revoked at any time. Mr. Stout explained what is being asked for is not out of the ordinary. The committee should see a rendering of what is planned before it's constructed. Ms. Myers feels the application is appropriate and reasonable, and covers all the concerns the Commission may have. Chairman Becker indicated the Commission needs to approve the application form, and suggested this be done separate from the procedures to be followed.

MOTION by Stout, seconded by Blanchard, that the Commission approve the application for the limited use permit for private access to the Paint Creek Trail.

Ayes: All Nays: None

MOTION CARRIED.

Chair Becker indicated the next item is the actual procedure. He indicated the Commission just received this information tonight, and asked if the procedure approval can be delayed until the next meeting. Ms. Myers stated the Commission just approved the procedure. There is confusion that the Commission approved just the application, and not the 3-page procedure. Dr. Bowyer indicated the procedures are not separate from the application – the application includes all four pages. Chair Becker said this is up to the Commission, as he feels the procedure is not part of the front page of the application. If the Commission wishes to approve the procedures now, they can do so with a vote, but may want to look over the procedures in the next month and approve them at the next meeting. Mr. Ferriolo has not had a chance to read through the information, wants time to review it before approving the procedures and suggests tabling it to next month. Mr. Blanchard agreed. The Chair asked if there was any objection to delaying the checklist. Mr. Stout explained it is the application and everything that goes with it – when you apply for a building permit, it has the application with the checklist. It's not the intent to have a separate vote for the procedures. Chairperson Becker said there is a lot of verbiage included that is not the application itself and thought the Commission would like to review this before voting on it. If

comfortable with it, the Commission is free to move ahead and approve it. Ms. Buxar thought the Commission was approving the whole thing, because the application approval doesn't make sense unless you follow the guidelines behind it. Mr. Ferriolo stated if the Commission understands that the application is the first page, then the vote should stand. If there's confusion on that, then the vote should be pulled and save the entire approval until next month. Dr. Bowyer said the next thing coming up is the two people that had encroachments – we will ask them to fill out the application form, but if the Commission hasn't approved it, they couldn't apply for it until the application is approved. Mr. Ferriolo suggested we move this item to the end of the meeting and give the members time to review it, and then vote and be done with it. Ms. Loeb added there commissioners who are absent tonight and did not get this information, and feels all members should have a chance to review this before a vote, and asked if legal counsel should review the information. Mr. Blanchard is concerned because a policy is in place and wants to make sure that this application works with the current policy. Ms. Myers explained the current policy does not state that you need to fill out an application. Chair Becker said the Commission can proceed with the two encroachments in question using the old procedure, and reserve the application approval for the next meeting. Ms. Myers reminded the Commission there was a motion and a vote on record. It was suggested the motion should be withdrawn. Chairman Becker said the Commission can decide not to use the application until the procedures are worked out. The procedures can be approved at the next meeting, and we'll move on to the two specific encroachments following the old procedure. Mr. Ferriolo indicated the Commission technically voted on the four-page application, and agreed that the previous motion should be pulled.

MOTION by Buxar, seconded by Bowyer, *Moved*, that the Commission reconsider the previous Motion.

Ayes: All Nays: None

MOTION CARRIED.

MOTION by Stout, seconded by Blanchard, *Moved*, to withdraw his original Motion.

Discussion on the two current encroachment issues up for consideration:

Feinstein Property – 1850 N. Livernois, Rochester Hills, MI. Mr. Stout indicated this is cut and dry – anything on trail property does not have permission to be there and the committee would like it removed. The homeowner needs to come back with an application and follow proper procedures. Chairman Becker indicated the Commission wants to cooperate with the property owner to give them access if it's done in the proper way, but if not, this encroachment will cease and desist.

MOTION by Blanchard, seconded by Stout, *Moved*, that the Commission approves the following Encroachment Ad-Hoc Committee's recommendation: Mr. Feinstein must comply by the May 8, 2018 date that was given to him at the January 16, 2018 meeting to remove all "boardwalk" items that are within 56 feet from the center of the trail to the trail property line. The Committee has deemed his boardwalk unsafe, and a liability for the Paint Creek Trailways Commission. If Mr. Feinstein would like to have access, we recommend that he fill out an application that will be provided to him.

Ayes: All Nays: None

MOTION CARRIED.

McDowell Property – 3272 Paint Creek Dr., Oakland, MI. Mr. Stout indicated this is the same situation. Chairman Becker indicated the Commission wants to cooperate with this property owner to give them access if it's done in the proper way, but if not, this encroachment will cease and desist.

MOTION by Blanchard, seconded by Bowyer, *Moved*, that the Commission approves the following Encroachment Ad-Hoc Committee's recommendation: Mrs. McDowell must comply by the May 8, 2018 date that was given to her at the January 16, 2018 meeting to remove all of the construction material, flanking timber, and the log across the end at the trail side. The Committee has deemed the construction materials, flanking timber, and the log as inappropriate

for use, and detrimental to the natural environment. If Mrs. McDowell, would like to have access, we recommend that she fill out an application that will be provided to her.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION: Class 1, Class 2 and Class 3 Electric Bicycles on the Paint Creek Trail: Ms. Myers thanked the public for their attendance tonight, and their comments last month. The Commission wanted time to digest information received last month, bring it back for discussion tonight, and look at options for opening of the trail for access to as many people as possible, while weighing the safety concerns with an eight-foot wide trail. A memo was prepared describing eight different options for Commission consideration including a draft of an amended Other Power-Driven Mobility Devices (OPDMD) policy. Ms. Myers then read the eight options, and the changes to the OPDMD policy, including a change to the speed limit to not exceed 15 mph, rather than 5 mph. The change in the policy gives a vague definition of mobility related disabilities, without opening it up for general use of Class 2 and Class 3 E-Bikes. She tried to find the middle ground – allow those who need it, to be able to use it, but not open it to general use. Dr. Bowyer likes option #3 – to allow Class 1’s for everyone and opt in to allow Class 2’s for general use. Mr. Blanchard was not originally in favor of allowing E-Bikes, but has changed his mind, likes option #3 as there are a lot of people already using Class 2’s on the trail and agrees with the changes to the policy. He believes at some point, the Commission should consider an overall speed limit on the trail. Mr. Ferriolo feels the 15 mph speed limit is appropriate, but still has a problem with the issue of safety on a heavily traveled trail. He would rather see the Commission wait a year or so to see what happens on other similar trails, and likes option #7 – opt out of Class 1, and continue opting out of Class 2 and Class 3, with the proviso that the amended policy be approved. He feels it is not a disability concern – it’s a safety concern. He’s not against this, but wants to have experience relative to what happens in the next year. He suggested speed limit signs be put on the trail. Mr. Stout agrees with the safety issue, and asked about reported injuries or instances on the trail. Ms. Myers indicated sometimes they are not reported, and there’s maybe one bicycle accident a year. Most calls and emails received by staff are about speeding cyclists. Mr. Stout is concerned about enforcement. Mr. Blanchard indicated the trail does not have a speed limit – only a limit for people with disabilities. He feels the Commission should consider a speed limit, but until then, putting signs up is not right. He is not opposed to waiting, but would like a trail speed limit be adopted. Ms. Buxar feels the Commission should wait and see how the new laws work on the other trails. She feels Oakland Township residents like to use the trail for equestrian use and walking enjoying the nature aspect of the trail. She likes the E-Bikes, thinks the amended policy is good for disabilities, agrees with looking at a speed limit, but would rather get statistics from other communities that are allowing E-Bikes to see where the trend goes and revisit this issue in the future. Mr. Stout asked if the Commission does nothing tonight, will it prohibit anyone who’s already been using the E-Bike from utilizing the trail? Mr. Becker said if we did nothing, Class 1 bikes would be allowed on the trail but Class 2’s would be prohibited. If the amended policy is adopted, we would be enabling many people to use the Class 2’s, and probably Class 3’s to some extent based on the definition of disability. Class 1’s would be allowed for general use. Mr. Ferriolo commented the current policy puts the onus on the individual to advise the Commission of their circumstance. If the Commission goes all in, the Commission is the one to say we’re allowing all classes. If the Commission is saying they are against that, the onus is on back the individual. The Commission’s action will be responsive to the individual’s actions. The Commission will be fair not only to those that are disabled, but also to the safety concern in general. This speaks well of the Commission to the overall care of the safety of the trail for now in response to something that is being thrust on the Commission by a law. Ms. McCardell asked with a lack of action to allow E-Bikes, would there be a responsibility if a Class 3 bikes was used and there is an injury because of lack of policing the trail. Ms. Myers indicated this falls under the liability insurance policy.

There is nothing in the ordinance saying what the punishment would be, so if someone was hurt by a Class 3, the insurance would still cover it. The Chair opened the floor for audience comments.

Mr. Scott Crawford, Rochester, MI indicated the Paint Creek Trail is a non-motorized trail, and if allowed, the Commission is permitting bikes with electric motors. Other than people with disabilities, he feels this is academic. If the bike had an internal combustion motor, it wouldn't be allowed. But because this is being thrust upon the trail, the Commission is trying to figure it out. The trail is a non-motorized trail. Chair Becker reiterated the law defines the electric bikes as non-motorized vehicles. Mr. Crawford feels safety is the right issue.

Mr. Gregory Krzeminski, Harrison Twp., MI 48045 said connecting our communities is very important for all people to go from one community to another. Some people have Class 2 E-Bikes and if one trail is not going to allow it, how are the users to get between the communities that we are trying to connect. He sent an email to staff recently indicated he has been putting on demonstrations of the difference between Class 1 and Class 2 E-Bikes. His next demonstration is early next month with the Huron Clinton Metro Parks. He is interested in the difference between the bikes, and stated there is no difference except one allows a rider to take off with a throttle when stuck in the middle of a hill or at a stop sign. He referred to the amended policy in the packet – setting the speed limit on the trail for handicapped people with mobility devices is like setting a speed limit for handicapped people on a roadway. If there is a safety concern, it's most likely the speed limit. The speed limit on the trail should be addressed for everyone, not just people with disabilities. Setting a speed limit on the trail only for handicapped people with their OPDMD devices is not fair – it discriminates against people with disabilities. They can only ride 15 miles an hour, while the speed racers can do what they want on a trail that has no limit. Speed limits should be established for everyone. He hopes the Commission goes ahead and grants Class 2 E-Bikes access to the trail to go from one community to another. Mr. Blanchard asked if Mr. Krzeminski knows of any other trail that allows the Class 2 bikes. He responded the Polly Ann Trail. Ms. Myers indicated Class 2's are allowed on a case-by-case basis, but they were going by the disability definition they adopted. Clinton River Trail is not touching this policy, so only Class 1's are allowed. Mr. Krzeminski discussed this issue with Harrison Township's Supervisor, who is hoping to making a motion to opt into allowing Class 2's; however there is some resistance with the Lake St. Clair Metro Park Authority. When people are on the Freedom Trail hopefully they can use their Class 2 bikes after the motion to opt in, but when they get to the park entrance they are not allowed. He hopes the Commission recognizes all people on their riding devices and they should have equal access to the trail.

Chairperson Becker referred to the speed limit for the OPDMD – he suspects the reason for this is that the Federal Government is very free with the ADA of what people can use on the trail. He feels the Commission was concerned that there may be devices on the trail that could go quite fast, that would be allowed under ADA, so the Commission wanted to limit that. Ms. Myers said there are other things other than E-Bikes that can be used – 36" wide or less, so the thought was being 3-foot wide on the trail takes up a lot more room than the 12 inches of a bike, that's why the speed limit was originally set at 5 mph. It didn't have to do with electric bikes per se, it was any device that was 36" in width or below. Ms. McCardell understands the policy wasn't designed to be this way, but feels the speed limit should be revised.

Mr. Joe Young, Village of Lake Orion Manager, asked with regard between a Class 1 and 2, can a Class 2 be operated as a Class 1 – the difference is choosing to use the throttle. Mr. Becker said yes. Mr. Young said that prohibiting Class 2's doesn't mean you can't use a Class 2, only that you can't use the throttle. Mr. Becker said this has not been decided. That's what would be

implied in such a motion. Mr. Young indicated traveling the trail up to the Village of Lake Orion, you're going uphill and the need to have a throttle in some cases will be more important. Chairperson Becker indicated the trail is busy at times, and not busy at all at other times. When not busy, it's safe to go pretty fast. One item brought up was the connectivity, which he feels is important. He doesn't think this can be solved tonight, and feels we should find out what other trails, e.g., the Iron Bell Trail system, are doing with their recommendations on how to handle this issue. He feels the electric bike is the wave of the future, and feels the Commission wants to accommodate as many trail users as they can, while maintaining safety on the trail. The speed limit is not a critical part of this right now, it can be done in the future. He is in favor of leaving the Class 1's allowed on the trail, and adopting the amended policy which would allow almost anyone that feels they need to use a Class 2 or a Class 3 to do so.

Ms. McCardell asked why the trail is called a non-motorized trail – because of pollution? Ms. Myers indicated she's not sure, but thinks Oakland Township pushed for it because of the natural areas and wanted it to be non-motorized - they were having trouble when the railroad was abandoned with motorcycles, snow mobiles and cars. Ms. Buxar said this is correct – when they removed the train tracks, it was supposed to keep the rural presence of the community. They tried to maintain more of the rural aspect – equestrian, walking and regular exercise for people's nature enjoyment. Ms. Myers added that because the creek crosses at 11 locations, there was concern about hazardous materials and oils spilling into the water – that's why it's limestone instead of asphalt as well.

Mr. Blanchard asked if the Class 1 and 2 can go the same speed. Mr. Krzeminski they are exactly the same, the only difference is one has a throttle. You don't have to pedal on take off with the Class 2's.

Ms. Buxar asked what the demographic is of purchasers of Class 2 or Class 3 – she has read it's a younger demographic. Mr. Krzeminski said his customers start about 50 years old, and he just sold an E-Bike to an 80 year old last week. Ms. Buxar is wondering about the general demographic ownership of these bikes. Mr. Gealy indicated he has a bike business in Orion Township and said the target market is not the younger people as these bikes are not cool. They are made to cruise around with. The people that buy these bikes are not going to speeding down the trail, they just want to get out and ride – the maximum speed limit is 20 mph, but these people won't go this speed. A question was asked about the different trail surfaces and how the bike handles it. Mr. Gealy said the tire width is 2 inches wide with a smoother tread and will a little more forgiving to handling as a regular bicycle, as they are geared to an older crowd. Mr. Krzeminski made a point that it doesn't matter what the surface is that the E-Bikes ride on – it's just a bicycle.

MOTION by Stout, seconded by Bowyer, *Moved*, that the Commission approve Option #3 – to continue allowing Class 1 electric bicycle use for everyone, and “opt in” to allow Class 2 bicycle use for the general public, not wanting any part of the speed limit or other restrictions as part of the motion. Class 3 bikes would still be prohibited for general use. Use of all three classes would still be allowed under the current Other Power Driven Mobility Devices policy.

Discussion on the Motion:

Chairperson Becker stated the Commission can modify the policy as part of another motion. It might be irrelevant if this motion passes, but it might give more flexibility. Mr. Blanchard agreed with the motion, but would like to review speed limits in the future. Mr. Becker is in favor of the motion and wants to allow people safely on the trail - by doing this we might get thousands of people that could never be there before. If safety issues arise, the Commission can handle it. Mr.

Ferriolo is against the motion, and prefers to wait a few years to see what happens, and then decide what to do – to allow Class 2's at this point is a mistake in his opinion. Ms. Buxar agreed, and feels to wait a year or two wouldn't hurt anyone. As far as the disabled and elderly, it is covered in the current policy and even more so in the amended policy. It was confirmed that the new policy is not included in the motion on the floor. Ms. Myers indicated the Michigan Trails and Greenway Alliance was very involved in this legislation, and there was debate over allowing the Class 2's, as well as the Class 1's – but it did come down to safety, and their information about safety. There was a lot of information last month from people who felt the Class 2's were safer, but the overall view is that they're not, because the throttles could get stuck, etc. This Commission talks about natural compatibility – when someone is pedaling, it's more compatible with the trail. With the Class 2's, although they go the same speed, you do not have to pedal and do not fit in with what this Commission has envisioned with natural compatibility. Those that wrote the law for the State felt that the safety aspects of the throttles were more of a concern at this point. That's why they said you have to opt in for Class 2's and Class 3's.

Vote on the Motion:

Ayes: Becker, Blanchard, Bowyer, Stout

Nays: Buxar, Ferriolo

MOTION CARRIED.

Chairperson Becker indicated that he hopes the Commission will continue to evaluate the safety concerns.

MOTION by Ferriolo, seconded by Buxar, *Moved*, that the Commission adopt the amended OPDMD policy as presented.

Discussion on the motion:

Ms. Buxar suggested taking the Speed Limit reference in #2 out in its entirety because it could give the appearance that we're putting a speed limit in for the mobility disabled people, and there is no speed limit on the trail. When we get to a speed limit discussion in the future, it would cover everyone, so it might not specifically be needed in the amended policy. It was suggested that #2 read "OPDMD speed must be based on existing trail conditions and volume of users on the trail". Mr. Ferriolo agreed to revise the motion on that premise, but only because he wants to make a motion to establish a 15 mph speed limit overall. Ms. Buxar agreed. Chairperson Becker won't allow a motion addressing speed limit tonight, and suggested it be discussed on a future agenda. Mr. Ferriolo agreed to put this issue on a future agenda for discussion.

Revised Motion:

MOTION by Ferriolo, seconded by Buxar, *Moved*, that the Commission adopt the amended OPDMD policy as amended.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION & APPROVAL: Village of Lake Orion Trail Extension Recommendation:

Mr. Becker indicated the reason this issue is coming back is because of the discussion at the last meeting, and the committee that put together the recommendation also recommended that they give the Commission a month to review the whole report and to understand it. The committee met again before this meeting because of Ms. Olijnyk's concerns about a couple of aspects of accepting the trail. One concern was whether the land in the Village of Lake Orion is actually land within Orion Township; the Commission can only accept a license on property that is within the member units. Therefore, Village of Lake Orion land has to be within Orion Township, because the Township is a member unit, and with the proper steps, the Commission would be allowed to accept the license. That step would include if the Commission approves the license,

requesting that the Orion Township Board of Trustees consent to the Commission accepting the license. If the Commission is to accept control of the land that is not on the old railroad, they have to have the consent of the governing body of the member unit in which the land is located. If the Commission accepts the license tonight, the next step would be to send a request to the Orion Township Board of Trustees asking them to consent to the Commission accepting the license. Ms. Steele, who is not present tonight and Orion's Trustee on the committee, was very much in favor of this and thought that the Board of Trustee's would entertain this idea. Chairperson Becker then referred to a hand-out regarding the impact of changing from a village to a city from the Michigan Municipal League – they understand municipal law well. Page 2 of the document states village territory remains part of a township area – village citizens are also township voters and taxpayers. The MML opinion is that village territory does belong in the township as well. So, according to the Commission interlocal, we are allowed to accept the land. Another hand-out from the Charter Township Act 359 from 1947 states all real and personal property subject to taxation within the limits of a village located within the township and ½ of 1% of the assessed valuation of all real and personal property subject to taxation in the balance of the township. That phrasing confirms that there is no doubt that the land within the village is also part of the township. Village of Lake Orion residents pay property taxes to Orion Township. Mr. Becker feels this information answers Ms. Olijnyk's concerns. Ms. Myers added that village residents also vote for township Trustees and vote in township elections. Chairperson Becker said the other concern was whether the Commission is allowed to accept the license, and in looking at the interlocal, with the condition that Orion Township consents to the acceptance, the committee asked the Village to re-look at the license. They felt confident that the license was properly written and the Commission could accept the license under the conditions. Most of the concerns have been answered, and he hopes the Commission can move ahead in a positive way for this great change for the trail. The committee is asking the Commission to vote to accept the license from the Village of Lake Orion contingent on Orion Township's consent.

MOTION by Blanchard, seconded by Stout, **Moved**, that the Paint Creek Trailways Commission agrees to the terms of the license agreement with the Village of Lake Orion subject to consent of the Charter Township of Orion, the member unit of the Commission, per the agreement to establish the Trailways Commission, section 5, subsection A1.

Discussion on the Motion:

Ms. Bowyer asked if the Commission attorney should review the license. Ms. Myers indicated the original draft of the license was reviewed by Ms. Hamameh, who had a different opinion about what constitutes a member unit. But through discussions with the attorneys and reviewing the tax bills, the committee thought it was correct that the Village of Lake Orion falls under the Township based on the state act. There was also seven items she had flagged that she had concerns about the license agreement. Of those, four of them had to do with the interpretation of member unit, which have been resolved. However, the problems she had were incorporated into the final document. The original document placed the burden of maintenance on the Trailways Commission instead of the Village. That has been changed – the Village is taking over maintenance, so has been satisfactorily changed. The liability question has been answered, it's joint liability and the Commission's insurance will cover this property as it falls under the member unit definition. Another concern about the Village being able to revoke the license agreement at any time – the language was changed to 90 days, and if the license is revoked, language was added acceptable to the Village, that the Village could no longer call any part of the extension Paint Creek Trail. There was a question about whether the Village owned the property, but information was received that they do in fact, own the property so that concern of Ms. Hamameh's was answered satisfactorily. So, nothing else has changed that would require the license to be reviewed again by the attorney. Her concerns were addressed. Mr. Ferriolo wants to make sure that the questions asked by Ms. Olijnyk last month have been addressed – one was

can the Commission accept a license on land that it does not own. Chairperson Becker indicated this has been answered. Mr. Ferriolo asked which lawyer answered this question. Mr. Becker said no lawyer has answered that. Mr. Ferriolo said the point was that the Commission was to pursue a legal opinion on this particular issue last month, and feels this question should be asked to Commission counsel and get an answer in writing for better understanding, not an interpretation of discussions between a subcommittee and the Village of Lake Orion. The other question raised by Ms. Olijnyk that needed to be addressed is would it better in the interest of the Commission, for the Commission to grant a license to the Village for our name – do we have that capability? We wanted a legal opinion on that issue. Mr. Ferriolo feels these two issues should be written up, passed on for legal address, and brought back to the Commission before we approve this. He is in agreement with the full process and wants to move forward, but these two issues have not been addressed. Ms. Myers indicated this was discussed with the Village, and they discussed it with their attorney. Section 5 Powers, subsection A General Powers #1 says the Commission shall have the following powers and authority – they can purchase, lease, receive, acquire, hold title in, trade, sell, lease or rent to others, dispose or divide, distribute, own or exercise right of dominion over all or part of any land and any improvements thereon within the railroad right-of-way described in Appendix A. In addition, the Commission may exercise those same powers over other land only upon consent of the governing board of the member unit in whose jurisdiction such land lies. So, the easement does not allow for leasing, but the word “receive” is important. The interpretation is that when this document was written, they were trying to cover all the bases on what possible ways the Commission could become owners or managers of property. The key word was receive, and that the license is a way to receive part of this land, as well as it’s all contingent on Orion Township agreeing to it. The interlocal says that other land that is not in the railroad right-of-way can be accepted by the Commission only upon consent of the governing board of the member unit in whose jurisdiction such land lies. This land lies within Orion Township’s jurisdiction because they have the dual layer of property over the village, which is why any motion would be contingent upon Orion Township approving it as well. Ms. Buxar feels Orion Township should approve this before it comes back to the Commission for approval. She assumes Orion would take all the proper legal obligations to have their attorney review this, and have a written report back just to cover all the bases. She feels this is the proper way to go about it, to have Orion approve it first and send it back to the Commission. Mr. Stout said that Orion is in complete agreement with this language and is the driving force behind it. There is no way that the Township will say no – they are ready to give up a seat and do maintenance. In his opinion, to go back to Orion again is just kicking the can down the road. Ms. Buxar still feels the questions that have been asked about the property – why would Orion Township not have this in writing from their attorney just as a CYA. Mr. Ferriolo stated this is not a new question, it was the question that was brought up at the last meeting and was not followed through on by the subcommittee or anyone else. Mr. Becker stated it was followed up on. The committee felt it had heard from the attorneys extensively, and have paid substantial legal fees. The Commission attorney has looked at the license, made her comments, and the committee has responded to all comments. He feels the Commission, as the governing board, can read an MML opinion and a law and understand that one of the objections made last month was addressed. It’s not fair or correct to say this concern was not followed up on. It’s very clear from reading the MML opinion and the Charter Township act, that nothing could be more crystal clear; he doesn’t want to spend any more money for the purpose of a lawyer to agree. Mr. Ferriolo feels Mr. Becker is incorrect in terms of what was requested at last month’s meeting, and suggested asking the pro bono attorney for his response. Ms. Myers indicated she asked the pro bono attorney, but it was out of his expertise. Mr. Ferriolo indicated the two questions still remain and are unanswered by anyone except by the Village attorney, rather than on the Commission’s behalf. He is not objecting to anything, hates to object to the motion on a technicality, and hates to vote tonight considering that these two questions are unanswered because it could be put to bed

if these two issues are pursued as requested. Mr. Blanchard feels the question about the member unit has been answered by the Charter Township Act – it says they are part of the Township, and the Township is a member unit, so the Commission can accept the land. That takes care of the licensing agreement. There is also a draft resolution about recognizing the Village of Lake Orion as a Paint Creek Trail Community – that’s how the committee decided to address that issue. If a legal opinion is needed on that resolution, we can wait on that part. He’s still in favor of going ahead with the licensing agreement because the questions about having an attorney review it have been answered. Dr. Bowyer asked why everyone just doesn’t put a blessing on this issue – she doesn’t see the problem with spending money for an attorney to say everything is OK. In the end, none of the commissioners can interpret anything, but the lawyers can. In the future, if the Commission is disbanded, with regard to the licensing agreement, it wouldn’t matter for the Village – they would still be part of Orion, and the trail would be dealt with by the Township as the Commission would be out of it. Whatever the Commission decides can be dissolved anyway if the Commission is dissolved. She agrees that the Commission attorney should be asked for her opinion and blessing on this issue. Ms. Myers asked if the Commission would consider asking a different municipal attorney that is willing to give an opinion pro bono to do so. The Commission has already spent almost \$4,000 on legal costs that could have been used elsewhere. Ms. Myers is trying to find a compromise – the committee has been concerned about the amount of money spent. If we can find a municipal attorney who will agree to give us a written opinion at no cost, is that an option the Commission can pursue? Mr. Ferriolo indicated he is not concerned about the money, and for the last couple of answers to the last couple of questions, it needs to be done to put the issue to rest. He’s not objecting to the issue, he’s objecting because he is concerned about the process of following through on questions that were asked by a commissioner last month to get this information. Let’s just get this information. Mr. Becker indicated Ms. Olijnyk did not ask the Commission to get another opinion from our attorney. She said we wanted to make sure we understood what we were doing. Mr. Becker feels the questions have been answered –our attorney looked over this license, and her concerns have been addressed. He trusts his reading of the MML statement regarding village territory remains part of the township area. Why do you need a lawyer to tell you what is in black and white? He feels it’s not necessary to go back to the attorney. He is not going to support taking this any further. Mr. Blanchard indicated that in consideration of Mr. Ferriolo’s concerns, he asked if the motion could be contingent on the Commission’s attorney’s approval. Mr. Stout agreed to this revision.

Revised Motion:

MOTION by Blanchard, seconded by Stout, **Moved**, that the Paint Creek Trailways Commission agrees to the terms of the license agreement with the Village of Lake Orion subject to consent of the Charter Township of Orion, the member unit of the Commission, per the agreement to establish the Trailways Commission, section 5, subsection A1, and upon written approval of the Paint Creek Trailways attorney.

Ayes: Blanchard, Bowyer, Buxar, Ferriolo, Stout

Nays: Becker

MOTION CARRIED.

Ms. Myers asked if the Commission wants to look at the resolution to recognize the Village of Lake Orion as a Paint Creek Trail community. Chairman Becker suggested this resolution be put aside until we get the approval of the license agreement, as the resolution is not meaningful without the license. Mr. Blanchard said if this was a question that Ms. Olijnyk had on licensing our name, can’t we ask our attorney to also look at this. Mr. Ferriolo feels the resolution is not part of licensing the trail name. What this resolution is, is a pat on the back of the Commission saying we appreciate the Village of Lake Orion’s desire to be part of the Trailways Commission. Mr. Young indicated the resolution before the Commission does not make any reference to the license, and only recognizes and welcomes the Village of Lake Orion to the Paint Creek

Community, which they already are, and acknowledges the trail extension. He asks the Commission to consider approving the resolution tonight.

PAINT CREEK TRAILWAYS COMMISSION RESOLUTION #2018-002

To Recognize the Village of Lake Orion as a Paint Creek Trail Community

MOTION by Stout, seconded by Buxar, *Moved*, to approve Resolution #2018-002 to support To Recognize the Village of Lake Orion as a Paint Creek Trail Community, as presented:

WHEREAS, the Village of Lake Orion desires to become an active participant on the Paint Creek Trailways Commission; and

WHEREAS, the Village of Lake Orion is part of the Member Unit of the Charter Township of Orion, per the State of Michigan Charter Township Act 359 of 1947; and

WHEREAS, the Paint Creek Trailways Commission currently owns and manages a ¼ mile of trail in the Village of Lake Orion from Newton Street to Atwater Street; and

WHEREAS, the Village of Lake Orion desires that a newly constructed path within the village limits from Atwater Street to Children’s Park be designated as part of the Paint Creek Trail; and

WHEREAS, the Paint Creek Trailways Commission Recreation Master Plan has identified having a trail extension into the Village of Lake Orion as a goal for over 20 years; and

WHEREAS, the Paint Creek Trailways Commission recognizes the value of intergovernmental cooperation to the improvement of the quality of life to trail users and to residents of Southeast Michigan; and

WHEREAS, the Paint Creek Trailways Commission desires to acquire additional natural trail and an improved Lake Orion trailhead at Children’s Park, making the Paint Creek Trail a “Park to Park” trail; and

WHEREAS, the Village of Lake Orion trail extension will provide trail users with an additional 120 parking spaces, access to public restrooms, and be an official Iron Belle Trailhead for the Paint Creek Trail;

NOW, THEREFORE, BE IT RESOLVED, that the Paint Creek Trailways Commission recognizes and welcomes the Village of Lake Orion as a Paint Creek Trail Community on the Paint Creek Trail.

Ayes: Becker, Blanchard, Bowyer, Buxar, Ferriolo, Stout
Nays: None

MOTION CARRIED.

DISCUSSION & APPROVAL: Bridge 33.7 Update and Change Order: Ms. Myers indicated the bid letting will be on May 4th, and they expect construction to start the first full week of June. She will try to attend and try to find out whether they are within the 10% contingency budget. In terms of the change order, this is a normal housekeeping item. There was some money that Mannik Smith Group did not need to spend, and have requested to move those funds to a different line item, which their contract allows them to do. They spent more money than they thought on several areas, one of them being a lot of conversations with Mr. McClure that were unexpected. All costs are outlined in the memo provided. Oakland Township Parks Commission has approved this change order, and the payment of \$3,860 contingent upon the

Commission approving it as well. Based on the joint agreement, the Commission needs to approve moving the funds from one line to another; it will not exceed the approved amount. **MOVED** by Blanchard, seconded by Ferriolo, *Moved*, to approve the change order for this project.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION & APPROVAL: 2018 Paint Creek Trail Newsletter/Communication Plan:

Ms. Myers provided a first draft of a newsletter to be sent to neighbors along the trail. There might be a little change of language on the first page depending on the bid letting for the bridge project. We want to let the neighbors know what's going on in terms of the construction and the resurfacing that's coming up. It will also highlight development projects coming up and upcoming events. Regarding encroachment issues, there is some property line information giving a reminder that the trail has 100 feet of right-of-way. If residents have questions, the Commission is happy to help. There is information for electronic newsletter sign up, because due to the cost, Ms. Myers only wants to mail one paper copy of a newsletter this year. She has set up the mail-chimp newsletter service for this. There was a choice between doing 4 pages or 8 pages. There is too much information to include on 4 pages. There is information about the Commission and meeting dates. The last page will include contact information and the labeling. It will be printed on 11" x 17" paper, folded in half and folded in half again and prices have been secured from Sir Speedy. 1,000 color copies, no saddle-stitch, folded at 5-1/2 x 8-1/2 would be \$1,200. They also offered to do the addressing and mailing service. The fee for that would be \$275 including postage. They have the license to use bulk mailing, which would be approximately .25-.27 per mailing. She feels it would be a better bargain to do it under Sir Speedy's license. If the Commission were to mail out 1,000 copies and have them do all the folding, tabbing and postage it would be about \$1,745. In terms of budget, there is \$2,500 set aside for a sign replacement project, we don't need that money right now as the Commission received a \$25,000 grant from the Iron Belle Trail grant. There is money in the budget that can be used towards this purpose. She recommends if interested, the Commission approve up to \$2,000 for this project. Ms. Myers asked if members had questions or any suggested changes. Ms. Bowyer said staff did an awesome job, and feels people would be interested in reading it. She said the address part has to be colorful, and suggested the logo be there. Ms. Bowyer commented that bulk mail doesn't always get delivered by the post office in a timely manner. She suggested using a stamp to get it delivered timely, and possibly using the artwork contest winners interspersed in the newsletter. Ms. Bowyer said the sooner this is mailed, the better. Ms. Myers said Sir Speedy needs 5 days to complete once given the order. Mr. Ferriolo thinks there should be more active people photos included, and to edit and try to get it less wordy. He feels the post office will get bulk mail delivered timely because their commitment is 3 or 4 days, and is OK with bulk mailing. Ms. Myers said the meeting schedule could be replaced with a photo collage. It was suggested the phrase "chock-full of information" on page 1, could be changed to "full of information". It was suggested that Ms. Myers and Ms. Gray's contact information with photos be included. Mr. Blanchard asked how often the Commission plans to do the newsletter. Ms. Gray indicated a one-time mailing. Mr. Blanchard said you're asking for contact information for an email notification, but how often will the newsletter be done. Ms. Myers said she's not sure – monthly or quarterly. Mr. Blanchard is concerned about staff's time for this, maybe something quarterly. Ms. Myers said the email stuff is easy. On page 1, it was suggested that the words "under construction" be deleted, and just mention the construction projects. It was suggested to see what the cost of first class mailing is versus the bulk mailing rate. The members all complimented staff about the great effort on the newsletter.

MOTION by Bowyer, seconded by Buxar, *Moved*, to approve up to \$2,000 for the production and mailing of the newsletter.

Ayes: All Nays: None

MOTION CARRIED.

APPROVAL: National Trails Day Plans and Recognition Ad Hoc Committee

Recommendations: Ms. Myers reported she has been working with the Lake Orion DDA to come up with plans for National Trails Day, June 2nd from 9:00 to 12:00 headquartered at Children’s Park in the Village of Lake Orion. The schedule of events is outlined in a memo in the packet and was summarized by Ms. Myers. Dinosaur Hill will provide a free make your own hiking stick craft – attached to the memo is a letter of agreement with Dinosaur Hill asking for remuneration of \$250 that Ms. Myers will ask the Commission to approve. Ms. Myers circulated the spike that will be given to 5 individuals/companies recommended by the Recognition Ad-Hoc Committee during the Recognition Ceremony. In terms of the budget, Ms. Myers indicated they would like to purchase at least 5 spikes, but should consider purchasing a few extra as she doesn’t know how long this out of state company will be in business. Five spikes are \$35 each, but if the Commission orders 10 spikes, the cost is reduced to \$30 each, plus shipping. She recommends purchasing 10 spikes, costing about \$350, but she’s recommending approval up to \$400. We would need 5 display boxes – they would be \$150 for the 5, including shipping. The Friends Group gave the Commission \$750 for sponsorship for this event. \$250 would go to Dinosaur Hill, and then the spikes and boxes would be \$500. So, there is money to cover everything. Ms. Myers is requesting Commission approval to order 10 spikes, 5 display boxes and pay Dinosaur Hill for providing the National Trails Day craft.

MOTION by Bowyer, seconded by Blanchard, *Moved*, to approve the purchase of 10 spikes, 5 display boxes, and to pay Dinosaur Hill for the craft event at National Trails Day.

Ayes: All Nays: None

MOTION CARRIED.

MANAGER’S REPORT: Ms. Myers added nothing in addition to her written report, other than a personal update that her oldest daughter has been offered two Fulbright scholarships – one for Germany, the other for Austria. She accepted Austria because she has already studied in Germany while in college, and the Myers family is very proud of her.

COMMISSIONER REPORTS: Mr. Stout recognized the members of the ad-hoc committee for the positive outcome for the Village, and welcomed Mr. Young. He added Orion Township has contracted with Turner Sanitation for two cleanings a week for the vault toilet at Clarkston/Kern. Commissioners thanked the Lake Orion ad-hoc committee for all their work, the extension and trailhead is beautiful. Everyone is excited and proud the Village is part of the trail.

ADJOURNMENT OF REGULAR MEETING:

MOTION by Bowyer, seconded by Blanchard, *Moved*, to adjourn the Regular Meeting at 9:35 p.m.

Ayes: All Nays: None

MOTION CARRIED.

NEXT MEETING: May 15, 2018 at 7:00 p.m. – Rochester Municipal Offices

Respectfully submitted,

KRISTEN MYERS, Trail Manager

HANK VAN AGEN, Secretary