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REGULAR MEETING of the PAINT CREEK TRAILWAYS COMMISSION
Paint Creek Cider Mill Building
4480 Orion Road, Rochester, Michigan 48306

CALL TO ORDER: The Tuesday, January 16, 2018 meeting was called to order by Chairperson Becker at 7:00 p.m.

Voting Members Present: Rock Blanchard, Susan Bowyer, Frank Ferriolo, Linda Gamage (*enter 7:05 p.m.*), Kim Russell, Hank Van Agen

Voting Alternates Present: None

Non-Voting Alternates Present: David Becker, Martha Olijnyk

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

Voting Members Absent: Jeff Stout

Alternates Absent: Robin Buxar, Ben Giovanelli, Chris Hagen, Lynn Loeb, Jenny McCardell, Donni Steele

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: The Chair suggested Adjournment of the Regular Meeting occur after the Request to Enter into Closed Session. Ms. Myers indicated the Public Hearing for Electric Bicycle Use on the Trail will be cancelled because of lack of public notice, but discussion will be heard. The Public Hearing can be held at a later date.

MOTION by Russell, seconded by Bowyer, **Moved**, to approve the January 16, 2018 agenda as amended.

Ayes: All Nays: None

MOTION CARRIED.

PUBLIC COMMENT: No public comment was heard.

CONSENT AGENDA:

- a. Minutes – December 19, 2017 Regular Meeting, approve and file
- b. Minutes – December 19, 2017 Joint Meeting with OTPRC, approve and file
- c. Treasurers Report – December 2017, receive and file

The Minutes for the Joint Meeting with OTPRC were removed.

MOTION by Bowyer, seconded by Blanchard, **Moved**, to approve the Consent Agenda as amended.

Ayes: All Nays: None

MOTION CARRIED.

Correction to December 19, 2017 Joint Meeting with OTPRC Minutes:

Ms. Myers reported that Oakland Township Parks and Recreation Commission considered the minutes for approval, but they pulled them to make one slight change. They amended the

minutes to add that Commissioner Blust was absent. She asked that the Commission approve the minutes as amended.

MOTION by Blanchard, seconded by Gamage, *Moved*, to approve the December 19, 2017 Minutes of the Joint Meeting with OTPRC be approved as amended.

Ayes: All Nays: None

MOTION CARRIED.

APPROVAL OF INVOICES: Ms. Myers presented the invoices in the amount of \$1,393.55. In addition to the recorder's monthly fee, this amount includes Foster Swift Attorney Services to review the Mannik Smith Resurfacing proposal contract and the Village of Lake Orion membership, refreshments for the December meeting, and a credit for refund of sales tax on staff's computer. Estimated unrestricted fund balance is approximately \$97,000.

MOTION by Blanchard, supported by Van Agen, *Moved*, that the invoices presented for payment are approved in the amount of \$1,393.55 and orders be drawn for payment.

Ayes: All Nays: None

MOTION CARRIED.

REQUEST FOR CONSIDERATION: Boardwalk-style encroachment, 1850 N. Livernois, Rochester Hills: The applicant is not present, so this item will be heard when they arrive.

REQUEST FOR CONSIDERATION: Pathway encroachment, 3272 Paint Creek Dr., Oakland Township: The applicants are present and Ms. Myers explained she prepared a Notice of Encroachment and Request for Correction for a small woodchip path near the Adams and Orion intersection. This information and photos of the encroachment were included in the packet. One photo was taken last year, and that first encroachment was corrected. The applicant requested to be on the agenda and provided supplemental information including a copy of the certificate of survey she had on file. They are requesting the Commission consider letting them keep their access to the trail. A copy of the Paint Creek Trailways Commission Trailways Property Encroachment Policy and Removal Procedures was also included in the packet for the member's information. Ms. Eleanor McDowell and her husband John, the applicants, introduced themselves. She indicated they purchased the home in September last year because they wanted to be on the trail. The previous owners showed them the deer path that goes to the trail for access. They wanted to make it safer, and had no idea they didn't own the property per their survey. They put woodchips down to make it safer. During the spring and summer you can't even find the path because it's so overgrown. The photo makes it look like it's wide open because it was taken when there was no foliage. They are asking to leave the access as it is because they don't want to walk along Adams Road to access the trail as there are no sidewalks. There are 4 x 4's holding the mulch in place. There is also a log crossing the path to help hold the mulch. They were asked if the 4 x 4's on trail property could be removed. Ms. McDowell indicated they could be removed if required, but feels it would make the path more dangerous. The chips make for a secure footing. They were then asked if there were shingles and building materials previously in the path, and if they have been removed prior to putting the woodchips down. This is not appropriate foundation material and would not provide a stable base for the path. Ms. McDowell does not recall this material being there but can remove it later in the year. The applicant's letter indicates they were confused and had questions about a number of things, and Mr. Ferriolo wants to make sure the questions were addressed. Ms. McDowell indicated Ms. Myers has resolved all concerns, and she is no longer confused. Upon a question about how deep the woodchips are, Mr. McDowell replied 8 or 9 inches. The 4 x 4's are held in place with rebar and are in the ground 8-10 inches. There are leaves underneath the chips. Mr. Blanchard objects to how the path is constructed but if it could be made safe, he wouldn't have any objections if an agreement could be worked out similar to other property owners. He is concerned about the leaves underneath the chips and that someone could get hurt on the trail's property. The leaves will decompose and the path will require maintenance a few times a year. Ms. McDowell asked if they could build a boardwalk. Mr. Blanchard said this has been done in other instances along the trail, and if the Commission approves it before it is built, he personally doesn't have a

problem with it, but it's a Commission decision. He feels a boardwalk would be safer than what exists. Ms. Russell implores that the Commission have a policy so that there is a clear procedure on how to handle encroachments, as she wants people to be able to utilize the trail. She wants access to be safe and natural, and is not a fan of the boardwalk. Perhaps pea gravel could be used for a foundation. Mr. Becker would like the lowest impact possible, and is not in favor a boardwalk if the chip trail would suffice. Mr. Van Agen feels the 3-4 inch chip trail is appropriate, but wants the construction materials removed if they are still there. Ms. Gamage feels the log that is at the end of the trail could hinder trimming that maintenance crews do. She also feels it appears that some trail property was cleared to make a wider trail. Mr. Blanchard added if there is water present, pvc pipe could be installed under the woodchips and a gravel base. Ms. McDowell will see what happens after winter, as they have not experienced this yet and feels the pea gravel is a good idea for drainage and safety. Ms. Myers asked if there is an access point in the neighborhood that everyone can share. Ms. McDowell indicated the lots are huge in the area, does not know her neighbors, but the neighbors on the one side could use the McDowell's access. No one has approached them to use their path. Ms. Myers stated none of the Orion Township members are present tonight, but Ms. Steele provided a joint email statement indicating their wish to maintain strict adherence outlined in the encroachment policy and the encroachment removal procedures – both Orion commissioners voted no on allowing the newest Orion Road homeowners encroachment, as this continues to set a poor precedence as outlined in the 56 previous encroaching lawsuits on trial property. Mr. Ferriolo suggested removing the log on the path and the 4 x 4's, and just have a chip trail. Ms. Bowyer does not wish to block the applicant's access to the trail, but to keep it natural. She suggests the removal of the shingles, the 2 x 4's and the log and just have a gravel base with wood chips for the path. Chairperson Becker suggested a committee look into the situation, discuss the issue with the applicants, and come up with criteria on how to allow limited use permits for access to the trail. Ms. Myers suggested a stay on this situation, so the applicant doesn't have to remove the encroachment by January 26th, and come up with a future date for compliance. The subcommittee will be comprised of Messrs. Stout and Van Agen, and Ms. Bowyer, who will discuss this particular situation, work with the applicants and come up with guidelines/policy for limited use permits for the April meeting. The Commission requested the log on the applicant's path be removed as soon as possible.

MOTION by Blanchard, seconded by Russell, *Moved*, to extend the applicant's removal of the encroachment until May 8, 2018 unless changed.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION: Class 1 Electric Bicycle Use on Paint Creek Trail: Ms. Myers included more information about the legislation for the members in the packet. The Commission discussed this issue in December. Ms. Myers spoke with Ken Elwert, the Parks Director for Rochester Hills who was very involved when this legislation was discussed. He is interested in knowing what the Commission is looking at doing because last year in Rochester Hills, there was a large group of Canadian tourists who came in to use the Clinton River Trail with their ebikes. There were no issues with this event. He knows some areas around the State are looking to restrict these bikes, but at this point, unless they become a problem, the City of Rochester Hills doesn't plan on prohibiting or restricting use in their parks or on their portion of the Clinton River Trail. His view is that the Clinton River Trail is not going to restrict them, and let the Class 1 bikes stay on the trail, as well as the ADA requirements where any of them can be used. Obviously, speed is one of the concerns she spoke with him about – and these bikes can go up to 20 mph, but speeding cyclists that are training are going over 20 mph, so those become an enforcement issue. His view is that we don't necessarily have to take any action right now. This law will go into effect January 28th, and the PCT can take the wait and see approach. If it looks like it is going to be a problem, then the Commission can hold a public hearing at any time and change the rules to prohibit or restrict them. Just because no action is taken by January 28th doesn't mean that the Commission is locked into never doing anything at all. His view is that the other agencies taking the wait and see approach. We may not see a lot of these bikes right now until the price is

reduced. Ms. Myers expressed her concerns regarding potential user conflicts between cyclists and pedestrians and trying to maintain safety. If the Commission would still like to consider having a public hearing and take public comment about this issue, it can be scheduled next month at the regular meeting. If it's not an emergency situation, the Commission may want to take a wait and see approach. The DNR is not taking action now, but will wait to see what happens. The engines on the ebikes are non-combustible engines, so they are not considered a motorized vehicle. Ms. Russell indicated the City of Rochester is holding a public hearing next Monday on this issue. Ms. Russell wants the older citizens to be able to use the trail, however she doesn't want a group of people going 20 mph. If groups are traveling to different trailways that are going 20 mph, it would seem to be a user conflict. She said it's fine for the Commission to wait and see what happens, but that usually involves someone getting hurt. Mr. Van Agen said the bikes are in the \$2,000 range and look virtually indistinguishable from other bikes. If the Commission is looking to ban the bikes, it would be almost impossible to tell the difference without setting up a checkpoint. Mr. Van Agen would like to use the wait and see approach. Mr. Ferriolo said these bikes have to have an insignia to make them stand out from regular bikes, but said the Commission prides itself on being a non-motorized trail. That is one of the reasons for being here, let's get back to the sense of who we are. These bikes are motorized, whether they are electric or otherwise. Disabled people still have the opportunity to use the trail, they are protected. He wants to promote bikes, but not necessarily ones with electricity, when the Commission is trying to deal with walking and jogging. He feels this is alien to what the trail is. Ms. Gamage feels the Commission wants to see as many people use the trail as want to for many different uses, and has been undecided on this issue. If things start to get out of hand, the Commission will hear about it. She feels it makes sense to take the wait and see approach for a little while to find out exactly what will happen. We are part of the Iron Belle Trail which may increase tourism. If the other ends of the trail allow the bikes, how does this impact the PCT. We don't know the answers to these questions. She likes the fact the Commission can always hold a public hearing and make the rule. She is inclined to wait and see to see how this unfolds, especially since other communities are doing the same thing. Mr. Blanchard is in favor of the wait and see approach to see if there are issues. If we allow the Class 1 bikes, how are we going to enforce the other two classes. Mr. Van Agen added the stickers/logos for the three classes are not always in the same location on the bike. Mr. Blanchard added if the Class 1 bikes will be allowed, trail users need to be educated that this is going to happen. Ms. Olijnyk is still not quite in favor of these bikes, but would like to hear from the trail users and is in favor of having a public hearing to hear comments from the users. She has a different perspective on the wait and see approach – the Commission could ban the bikes, wait and see, and if there's not a problem on other trails, then lift the ban and allow them. She feels it's harder to allow them and later change it, than to not allow them and later say yes. Ms. Myers stated this is not a bad idea. She read Ms. Steele's email comments sent on behalf of Orion – “no on electric bikes being allowed on the non-motorized Paint Creek Trailway”. She noted that the Polly Ann Trail is having their public hearing in the next couple of days. She will be anxious to hear from them about the feedback received, and will report back to the members. Mr. Elwert also commented if the Commission is going to restrict the bikes, signage will have to be placed at entrances to the trail saying they are restricted, because people will be using them on the Clinton River Trail or the downtown River Walk and when they get to the Paint Creek Trail, they will need to know they are not allowed. Ms. Bowyer pointed out that class 1 bikes are only going to assist the person that is biking, and if they can't bike up to 20 mph, they are not going to be going 20 mph. She would take the wait and see approach as she doesn't think the Class 1's are going to a problem as people are still pedaling, but says no to the Class 2 and 3's. Ms. McDowell, the applicant for the trail encroachment issue on Paint Creek Dr. commented the problem she sees with the wait and see approach is that if she buys a \$2,000 bike because she's allowed to use it on the trail, and then two months later it's restricted, she will be upset that she's got a bike that she can't use on the trail. Ms. Russell said there is no harm having a public hearing, it's a good exercise to go forward with as she's not for or against the idea. If the Commission decides to opt out, and we're going

for the Iron Belle signage, this would be a perfect time to do something with the signage for a non-motorized trail. Mr. Ferriolo commented that we're already doing everything we can to make people aware of bikes, and now we're going to say – mechanical and electric bikes are allowed and trail users have to be aware of them also. He feels we will instill some fear into the users who don't use bikes. He feels the Commission should opt out now and then take the wait and see attitude as to whether or to opt in a year or two.

MOTION by Blanchard, seconded by Russell, *Moved*, to hold a public hearing on the electric bike issue at the March meeting, in order to have time to get information published about this issue and get people who have different opinions invited to the meeting.

Ms. Gamage would like to see people attend who have expertise in ebikes, as well as people who have used them, not only people who don't know about them, so that it's a well-balanced hearing. She wants to hear both sides to this issue. Ms. Myers will reach out to a local bike shop.

Vote on the Motion:

Ayes: All Nays: None

MOTION CARRIED.

2018 OFFICER ELECTIONS: Chairperson Becker opened the floor for nominations and indicated all current officers have agreed to serve for another year. The floor was opened for any other nominations to any office; no other nominations were heard.

MOTION Bowyer, seconded by Ferriolo, to re-elect the current slate of officers by acclamation – Mr. Becker as Chairperson, Mr. Blanchard as Vice-Chairperson, Ms. Steele as Treasurer and Mr. Van Agen as Secretary.

Ayes: All Nays: None

MOTION CARRIED.

2018 AD HOC COMMITTEE APPOINTMENTS: Ms. Myers provided a summary of the Ad Hoc Committees and who is currently serving on them. The Rochester Hills Art/Pathway Project committee will be merged with the Trail Improvements committee. If a Resurfacing Committee is formed, Mr. Becker agreed to serve. Ms. Myers feels the Resurfacing committee can be formed in the future. Volunteers for the Committees are as follows:

Recognition Ad Hoc committee (as part of National Trails Day): Gamage, Olijnyk, Russell

Personnel Ad Hoc committee: Becker, Blanchard, Steele, Van Agen

Development of Property in SE Rochester committee: Becker, Blanchard, Gamage, Russell

Labor Day Bridge Walk committee: Blanchard, Bowyer, Ferriolo, Olijnyk

Lake Orion Membership Ad Hoc committee: Becker, Blanchard, Steele, Van Agen

Trail Branding Ad Hoc committee: Gamage, Loebs, Myers, Olijnyk

Rochester Hills Art/Pathway & Trail Improvements Ad Hoc committee: Becker, Blanchard, Bowyer, Russell

Limited Use Permit Policy committee: Bowyer, Stout, Van Agen

All volunteers were thanked for their assistance.

DISCUSSION: 2018 Goals & Objectives: Ms. Myers compiled a list of everything the Commission decided were the goals for 2017. Some of the goals are on-going, but staff made has made progress and completed many of them. She then listed the 2018 goals, which includes 2017 goals that were not completed. The bike patroller position needs to be filled, so the Personnel Committee will have to work on that. Also listed is a timeline for goal completion. The schedule will all depend on if the bridge project is on schedule and whether any complications arise – this goal should be completed by November 2018. Some of these timelines may shift if the bridge project or resurfacing creates unexpected work for staff. Ms. Myers also listed goals that require expert assistance, i.e., the Native Plant Approval Policy and the Conservation Stewardship Policy. She asked the members if there is anything missing and to prioritize the goals. Ms. Russell would like to see a Policy and Procedures manual developed and available at the meetings. Ms. Myers

indicated a manual does exist and most policies are on-line. This could be assigned to a subcommittee and eventually reviewed by the Commission. Ms. Myers will send out an email to the Commission listing the existing policies and dates written. Regarding the Fund Balance Policy, it was suggested the Manager come up with a recommendation and bring it to a meeting for discussion. Because the Commission's budget is so small, it makes sense to have a larger fund balance in case something comes up, and also because the Commission has a very small income stream. Ms. Myers will ask the auditor for a recommendation, and an actual policy may not be necessary. Ms. Russell commented the reason policies are developed is not for today, it's a legacy for the future. The Limited Use Permit/Encroachment Policy needs to be developed as the Commission has dealt with three instances this year. This policy will be listed as a goal for 2018. Ms. Myers was asked if the goals as listed are attainable. She responded that the bridge and resurfacing have to take priority this year. The public events and the Moutrie project are also priorities. Some of the goals will continue to be on-going, and some are dependent on other people. Most of the goals listed can either be completed or progress can be made on them. She will work on what she can around the bridge project and report progress in the Manager's Report.

REQUEST FOR CONSIDERATION: Boardwalk-style encroachment, 1850 N. Livernois,

Rochester Hills: Ms. Myers indicated the applicant, Mr. Adam Feinstein is present, introduced him and explained he is the new homeowner at 1850 N. Livernois. Included in the packet is information relative to the encroachment, including an aerial photo from 4/2017, the Notice of Encroachment sent to the homeowner, information from the survey map, a letter received from the applicant regarding the reasons he would like to have the boardwalk and a note from the previous owners. The applicant bought the property in July because of the close proximity to the trail, wants to use the trail, and was disheartened to learn of the encroachment situation. Chairman Becker explained there was another encroachment issue discussed earlier tonight and in response, the Commission decided to form a subcommittee to look at how to handle that encroachment, work with the homeowners for resolution and report back to the Commission. That committee has been formed and Mr. Becker suspects the committee can look at this situation as well. Mr. Feinstein said he didn't start putting the path in until September. He read the by-laws and the goal was to inform all the homeowners about encroachments. He had no idea when he built the boardwalk it was an encroachment. The previous owner had a boardwalk but it was dilapidated, so he added logs that were cut down from the trees for the base along with the cement blocks that were underneath his deck. He figured when the logs were gone, that the blocks would still be the base of the structure. It took him four or five weekends to replace all the wood, so it wasn't something done overnight. If someone complained about the encroachment, they knew he was working on it for weeks before it was finished. That was the biggest issue to him. The other issue is there are other encroachments on the trail near him. The second section of his boardwalk starts at 42 feet from the middle of the trail. If he has to remove some of his walk, he needs to know what can be removed to still make the Commission happy and have access to the trail. He does have a neighbor that offered access to the trail, and he does have an option to connect his boardwalk to that access. He does not want to walk down Livernois for access. The encroachment can't be seen from the trail. He would be fine with having a limited use permit. Ms. Olijnyk commented that one of the goals of the Commission is to find shared accesses to the trail, and this situation is different from the other encroachment discussed tonight. Ms. Bowyer commented some of this encroachment is over water. Ms. Gamage reiterated the Commission's concerns are for the trail and for trail users, and when the encroachment policy was developed, one of the concerns was to have as few safe access points to the trail as possible. Mr. Feinstein would still like the option of having a limited use permit, but completing the boardwalk the right way. He feels his options are removing the encroachment, removing a portion of it, or replace it to the satisfaction of the Commission with a permit.

MOTION by Blanchard, seconded by Ferriolo, **Moved**, to follow the same steps the Commission did with the other encroachment issue – that the applicant's removal of the encroachment be

delayed until May 8, 2018 unless changed, and the committee work with the property owner to come back to the Commission with an acceptable design of the pathway.

Ayes: All Nays: None

MOTION CARRIED.

MANAGER'S REPORT: In addition to her written report, Ms. Myers added she and Ms. Milos-Dale had a meeting with the Road Commission, Mannik Smith Group, and MDOT on January 9th regarding the GI plans that were submitted for the bridge project. Regarding the tree removal & trimming, Oakland Township Parks will be able to handle most of this between Silver Bell and Dutton. Tree removals will need to be done by March because of spring bat habitat restrictions. Parks will also assist with native plant seeding, and removing the bench by the water. Comments from MDOT included corrections/updates to the gravel/cobblestone mixes, more detailed limestone specifications, safety signage near the site, and maintaining traffic on Silver Bell and Orion Roads during bridge delivery. Typographical corrections were also suggested on the plans. Ms. Myers requested that worker porta-potty locations along the trail be determined in advance to be respectful of the neighbors. Ms. Myers made it clear that we would like parts of the current bridge salvaged for future interpretative displays. MDOT/RCOC have no issues with this project at this time, and should be going out to bid in February, so the company will be chosen in May, and construction will start the beginning of June. The engineers will make the suggested corrections, work with Oakland Township Parks, and resubmit the paperwork for final MDOT approval.

COMMISSIONER REPORTS: The Fire & Ice Festival in Rochester is this weekend. The Friends of the Clinton River Trail Annual Meeting is January 30th at the Van Hoosen Museum.

REQUEST TO ENTER INTO CLOSED SESSION:

MOTION by Bowyer, seconded by Gamage, *Moved*, to enter into Closed Session at 9:25 p.m.

Ayes: Blanchard, Bowyer, Ferriolo, Gamage, Russell, Van Agen

Nays: None

MOTION CARRIED.

The Regular Meeting was reconvened at 10:16 p.m.

ADJOURNMENT OF REGULAR MEETING:

MOTION by Gamage, seconded by Blanchard, *Moved*, to adjourn the Regular Meeting at 10:16 p.m.

Ayes: All Nays: None

MOTION CARRIED.

NEXT MEETING: February 20, 2018 at 7:00 p.m. – Paint Creek Cider Mill

Respectfully submitted,

KRISTEN MYERS, Trail Manager

HANK VAN AGEN, Secretary