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

CALL TO ORDER: The Tuesday, May 15, 2018 meeting was called to order by Chairperson Becker at 7:00 p.m.

Voting Members Present: Rock Blanchard, Frank Ferriolo, Linda Gamage (*enter 8:20 p.m.*) Kim Russell, Jeff Stout, Hank Van Agen

Voting Alternates Present: Chris Barnett, David Becker (*voting until 8:20 p.m.*), Jenny McCardell

Non-Voting Alternates Present: Robin Buxar, Martha Olijnyk

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

Voting Members Absent: Susan Bowyer, Donni Steele

Alternates Absent: Ben Giovanelli, Chris Hagen, Lynn Loebis

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

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

PLEDGE OF ALLEGIANCE: All rose and recited the Pledge.

APPROVAL OF AGENDA: Mr. Becker asked that the Discussion on Bridge 33.7 Bid Letting & Update be moved up after the invoices, and because the attorney is not able to be present tonight, he asked that the Closed Session be removed from the agenda. Mr. Ferriolo objected to removing that item from the agenda.

MOTION by Blanchard, seconded by McCardell, ***Moved***, to approve the May 15, 2018 agenda as amended.

Discussion: Ms. Russell asked if the closed session is removed from the agenda, when can the attorney be available. Ms. Myers indicated May 21st and 22nd, and she will also ask if she would be available at our next meeting. Ms. Russell suggested asking if she could be available at the joint meeting – Ms. Myers indicated once this date is finalized, she will ask the attorney if she could be there. Mr. Ferriolo asked for clarification in either case, that the attorney will meet with the Commission – and asked when this would be. He explained the only reason he wanted the closed session is that he wanted to make sure the Commission will meet with the attorney and discuss the things she offered to discuss. Ms. Russell added it is important the Commission talk in closed session about the attorney client privilege to ask questions freely. She doesn't want to move that unless something is in place that we talk with the attorney. Mr. Blanchard asked if the item Mr. Ferriolo wants to add is that the Commission discuss dates to meet with the attorney. Mr. Becker suggested this be discussed under Commissioner Reports; Mr. Ferriolo said no. He wants to add an item to the agenda to determine the Commission's commitment to meet with the attorney, before the Village of Lake Orion Trail Extension discussion.

MOTION by Ferriolo, seconded by McCardell, *Moved*, to amend the main motion to add a discussion to have a commitment of the Commission to have the attorney discuss attorney client privileged information after the Iron Belle Trail Grant discussion.

Ayes: All Nays: None

MOTION CARRIED.

Vote on the main motion to approve the agenda as amended.

Ayes: All Nays: None

MOTION CARRIED.

PUBLIC COMMENT: No public comment was heard.

CONSENT AGENDA:

a. Minutes – April 17, 2018 Regular Meeting, approve and file

b. Treasurers Report – April 2018, receive and file

MOTION by Ferriolo, seconded by Blanchard, *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 \$2,535.57. 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, reimbursement for newsletter postage, City of Rochester's special events permit fee and Kiwanis Shelter reservation fee for the Labor Day Bridge Walk event, payment to Dinosaur Hill for the National Trails Day craft activity, encroachment legal services invoice to Foster Swift Collins & Smith, and payment for recognition day spikes and display boxes. Estimated unrestricted fund balance is approximately \$100,000.

MOTION by Russell, supported by Van Agen, *Moved*, that the invoices presented for payment are approved in the amount of \$2,535.57 and orders be drawn for payment.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION: Bridge 33.7 Bid Letting & Update: Ms. Myers indicated a spread sheet with all the bid tabs from the four bids and a summary of the phone call conversation Ms. Myers and Ms. Milos-Dale had with MDOT, DNR, and Mannik Smith Group has been provided for information. She turned over the floor to Matthew Mikolajczyk, P.E., and explained this same information was presented to the Oakland Township Parks meeting last week; he is here to answer questions and give suggestions on how to move forward. Mr. Mikolajczyk thanked the Commission for the opportunity to speak. He comes with unfortunate news on how the bids came in on the project, obviously they are over 30% above the engineer's estimate. Despite using unit prices and jobs that were awarded late last year, some of the unit prices were considerably higher than what they anticipated. That is shown in how the four bidder's prices came in. It was a competitive bid, and are grouped quite close to one another. There is not a large discrepancy, so that says there is a trend in the market that contractors are busy. They have talked to the bridge supplier, and there was a 20% increase in the price of the bridge because the rate of steel has gone up. Also, there is a cost increase for all materials for up to 20% based on the conditions of the roads and fees truckers have to pay for moving materials. There were a lot of special bid items for the natural stone and sanding gravel mix that they were required to use by the MDEQ. Those units were a smaller amount of quantity, and the unit prices were a lot higher because it was a special, non-standard MDOT type of item they were told to use by the MDEQ. Other issues were brought up after discussions with the contractors were site accessibility – they had concerns about getting the equipment on the site, cranes set and getting things off the site because it is a one-way path. There were some issues with maneuverability knowing they were restricted to a known width on the path. These were all things they knew were going to be issues, but

didn't realize the ramifications it would be at this time of the year. There were a lot of bids that were let by MDOT during this letting – 89 for this particular month. An average would be in the 60's. There is obviously more work out there. After their review, they came up with a few options that could be done at this time. These were presented to Oakland Township Parks, and they have voted to deny the acceptance of the bids, make some changes to the plans, and put it out to bid at a later date, contingent upon the Commission and RCOC rejecting the bid. Mr. Ferriolo has a question relative to the process, said he got an email that indicated it might be \$200,000 over because of steel and freight – he thought if the grants could move a year, maybe because of the steel thing, that might come down. Then at the Parks meeting last Wednesday, they came to a conclusion, and then Trailways has a meeting, and they come to a conclusion, and if there is a difference in conclusion, they meet to work out the details to come together in unison. That's how everything went on up to last Wednesday. It stunned him when now the Road Commission is saying, based on the Commission's recommendation, they were pulling the bids because they needed an answer right away. Ms. Myers responded she got a phone call from Tom Noechel at the RCOC saying he hates to do this, but he has to give answer by noon that day and tried to get an extension until Wednesday so the Commission could meet – Parks has already rejected the bid. She asked if the Road Commission, being the fiduciary, recommends the Commission reject the bid – he said yes. Ms. Myers said OK knowing the Parks had rejected it, and the Road Commission wants to reject it, the Commission does not have the extra \$200,000 to cover it – she said he has to tell them to reject the bid and Commission will formalize it tonight. She did not have a choice in the matter – but it was contingent upon the decision tonight. Mr. Ferriolo said the Road Commission had a deadline that the Commission was not aware of – the Commission is almost moot at this point in terms of what they can do. He feels there is another path to dealing with this – and asked Mr. Mikolajczyk if it is known how many bidders will be in place in the fall or whether the price will be lower, because the work has already been done. He asked what the engineers are going to bring to the table that's not already been done – why wasn't it brought forward if it is something new, when the Commission was looking for ways to save money last December. His experience is that prices go up from year to year. What Parks did not take into account is the implication of what happens when you have to delay things. If costs continue to go up the only thing that is going to occur is that the Commission is going to sacrifice value where they can. No one is saying prices are going to come down next year. Three bidders were within 5% of each other which is very telling. Mr. Mikolajczyk agreed – there is no way to tell at this point and there is concern and risk with waiting. The real question is that he knows the product they are looking for. What is the Commission willing to give up on the design in order to save money later? Chairman Becker indicated this will be discussed in the joint meeting. Mr. Mikolajczyk said the goal is to help make decisions with the Commission. Right now, some of the ideas he has in moving forward in order to reduce costs is there is a resurfacing project coming up – there are areas where they can move some items from the bridge bid to the resurfacing project hoping to save money with a reduced unit price. For instance, the surface course for the bridge – there is only a very small amount of surface course aggregate that they were going to add on the bridge contract. If this was to be moved to the resurfacing project, they wouldn't be paying a premium for that – it should be a lesser amount due to the quantity – the same with the aggregate base and some of the clearing items and stump removals. There would be quantity with the resurfacing project, so there will be some cost savings likely as the unit prices will come down with the larger quantity. They also talked about reducing the span length; that would take a little more effort, but it is a possible there could be some savings – but there would also be some changes associated with the foundations, etc. It's difficult to know until they sit down and think about it and bring options. Ms. Buxar indicated reducing the span was discussed at length last December – but what was concluded was the engineering firm would have to do additional hydrology studies and additional foundational tests – the amount that would be saved over that loss of additional span would then be sucked up into the engineering phase.

She said a 38% cost differential between the estimated pricing and the cost is a pretty bad estimate for an engineering firm. Mr. Mikolajczyk said the estimate was based on the most up-to-date previous bids that came in - they don't know what's going to happen in the future and they take a best guess at it. They tried to increase some of the estimates on a unit price that would come in due to the difficulty in getting to the site. Ms. Buxar said this was also discussed – the inability of the one-way access. Oakland Township buys a ton of limestone, and the price goes up every year. It would have been nice to know this ahead of time if the project is going to be combined, as the Township is already buying these materials, and the majority of costs will come from the Township. Whatever the Parks Commission approves, it will come back to the Board of Trustees for a final vote. Mr. Mikolajczyk challenged the Township to provide a unit price of the tonnage rate for the gravel mix – they had \$185 a ton. This is high based on what the cost for a normal truck load is. There is a cost for the contractor to buy it – he's going to want to make a profit – and for him to dedicate his crews and time to a project, there will have to be a minimum cost. That is what he's dealing with. Mr. Ferriolo indicated that it's not that we're being accusatory, it's that Oakland Township has a lot of money involved with this project. It's their expense, even though he objected to the \$20,000 that the Trailways Commission agreed to pay. The money is there to pay for this. The other thing with shortening the bridge to save money, is that the engineers would have a problem with the base because of the pilings or scouring. The Commission and Parks said they would go with what the engineers said and keep the span as proposed. Mr. Ferriolo wants to hear where they will save money, not value – he wants to maintain the 75 year life. He doesn't want to kick this responsibility further down the road. He wants to know what they missed, and how can they save money in the re-bid, when the costs are probably going to go up. Ms. Myers said they talked about the mobilization, there was a maximum the bidders could bid on – which was \$52,700. So to make up for what they felt was going to cost more than that, the low bidder may have added more into the removal of the structures line item, and that's why it was \$46,486 above the estimate. Mr. Mikolajczyk indicated that's a possibility, that's what he thinks is happening. A lot of times, the contractors will move dollars around, especially in the lump sum items, as they get paid up front for that kind of work, especially with mobilization. Ms. Myers asked if the mobilization costs are a percentage of the project cost, so they couldn't bid above that? Mr. Mikolajczyk said MDOT doesn't like to use a percentage, they like to take what the percentage of the engineer's estimate is and make it that value. This was a dollar amount that they had to bid across the board. Ms. Myers asked why the cofferdams came in so much higher with Dan's Excavating. He explained that's a likely spot where they moved a lot of their mobilization costs just to cover the additional costs they felt were there, or possible profit they thought was there. Ms. Russell said part of this is accountability because a lot of these things were discussed in length at the meetings – especially the span of the bridge – this is a huge miss. She can understand 20-25%, but not 38%, so there has to be some kind of accountability. She hasn't heard this. She asked why all the parties did not know the deadline, whether the bids can be taken separately, e.g., the thinning and clearing. Those kind of things – with the mobilization max of \$52,700 – is an integrity issue for her. She doesn't know if this can be done, but asked the clearing, thinning and live staking could be bid separately. Ms. Myers explained that the live staking is a requirement of the MNRTF grant, so it can't be removed. Ms. Russell said the three bids came in within a certain percent, but if you look at where the misses are – they are all over the board. She feels we need to analyze this to see where can we do three separate bids. Ms. Russell then asked what the percent is for the engineers on this job. Mr. Mikolajczyk said it's based on the time the contractors plan to do the work, he provides the proposal based on what they estimate the schedule of construction to be. The engineer's percentage is based on the work amount. Based on the engineer's estimate, they are usually at 10-12% for an MDOT project. Ms. Russell said maybe it's time to take a breather on the project – it's not like the bridge is going to fall. She wants to know the cost from the engineer for the re-bid, and why the parties did not know the deadlines. Mr. Mikolajczyk said the deadline

used is tied to the response time of whether or not you accept the bid. MDOT was pushing that, and he believes the deadline is way over the time that they gave them – it's usually a month to decide on whether or not to accept the bid. He's not sure why MDOT was pushing it so hard. Ms. Myers added we expected the bid to come in at no more than 10% over engineer's estimate, which would have been an automatic award – which means they wouldn't have had to accept or reject that bid, MDOT would have automatically accepted it on the Commission's behalf. It was because it was over budget that we got into the deadline timeline issue. Mr. Barnett said he read all the documents and reviewed this issue, and if anyone's gone out to bid for anything, this is not a surprise to him. Unfortunately it might not seem like a small number, but this is a small project and all skilled contractors are full of work. He had a project that came in way over budget and waited and re-bid and it will still over budget. He does not think this bid will ever come in any cheaper as there is not enough labor force out there, and they are making money. Mr. Stout asked how big of a hit this will affect grant opportunities. Mr. Mikolajczyk said he does not see any indication that anyone is upset or shocked, 17% of the 89 projects that were out to bid were over the 10%. He indicated this was primarily the only project that was a pedestrian/steel project, and probably the one with this much access issue. It's work that the contractors won't find easy where they can get in and get out because of that. He feels they were looking at it as if they get it, great, and if not, they have plenty of other work. Ms. Buxar agreed that she sees costs going up, and has an issue with the fact that Parks kept hearing there was a 40 day hold on the quote pricing. What she is hearing is that the Township would have preferred to get the money out of fund balance and get it done, but the Parks said no. It would have been a good opportunity if this Commission would have had a chance to meet and put forth their opinion and then got back with Parks, hash it out, and then went forward to the Oakland Township Board. It's her opinion that maybe there will be a little bit of savings, but next year, it will be no better. Chairperson Becker indicated that the Commission will be meeting with Oakland Township Parks and Rec, and there's always a chance that if the Commission decides to go in a different direction, Oakland Township Parks and Rec can always reconsider. Ms. Myers indicated Mr. Mikolajczyk has ideas on how to reduce prices, and these will be discussed in more detail at the joint meeting for the groups to decide on whether to go forward and re-bid with a reduced scope or changing some things or not. She indicated funds are committed, and an extension can be granted from the trust fund in July 2019 and has received word from MDOT that we can get an extension from TAP. Ms. Buxar still feels it would have been good to have the Commission meet and vote, and then get both bodies together to discuss where to go with the bids they have, without the re-bidding. Now it's a next year project. Chairman Becker indicated there will be a joint meeting, and if the Commission is convinced there is a better way to go, they can rescind their decision. They can decide to move ahead in the way the Commission wants to two weeks from now. Mr. Ferriolo said option #3 – accepting the bid as is with no scope change, is off the table. Mr. Blanchard stated the Commission does not have the option of accepting the bid with no scope changes. At this point, the options are to have a joint meeting to discuss reducing the scope and costs, and go forward from there. Parks can't rescind their decision. Mr. Ferriolo said this Commission has been neutered as far as their efforts – he would have enjoyed having a discussion with Parks to see if we could have changed their mind and see where go with it. Mr. Blanchard said if this will be discussed in a joint meeting, to see about possible cost savings, what the Commission discussed tonight doesn't really matter because we've already rejected the bid, and have to have a joint meeting to decide how to go forward. He doesn't want to spend anymore time of this issue tonight – just have the joint meeting. Mr. Becker indicated that the Oakland Township Parks and Rec motion of rejecting the bid from their point of view is contingent upon the Trailways Commission's rejection. He's not sure what would happen if the Commission decides not to move on this. If this Commission feels it's forced into a decision it doesn't want to make, he feels we should take no action should the majority decide to do that. Mr. Ferriolo wants to go on

record with a vote. Ms. Myers indicated as part of the joint agreement, the Commission is required to take action.

MOTION by Blanchard, seconded by McCardell, *Moved*, to reject the low bid for the Bridge 33.7 Renovation Project.

Discussion on the motion: Ms. Olijnyk said if the motion passes, then we're all on the same page, but if this motion is denied and a new motion is made to accept the bid and passes, she doesn't know what will happen. Ms. Myers said it won't, because of the joint agreement, both boards have to unanimously agree. We can't promise \$150,000 out of Parks and Rec millage funds. If the Commission accepts the low bid now, we're saying we're going to come up with the \$150,000 or Oakland Township is coming up with it. The Commission doesn't have it. That's one of the reasons the Commission is rejecting the bids, because we don't know where the money is coming from. If we accept the bid, we're saying we're accepting \$802,000 – we'll find the money later. That's why we're saying reject the bids now, as Parks is saying they don't have an extra \$150,000. Chairperson Becker said to accept the bid would be irresponsible because the Commission does not have the money. Ms. Buxar said Parks and Rec was out of line in making their motion to have it contingent on this Board's action, unless you're going to vote at the same time. The two bodies should have met at the same time and had this discussion, so it would have pre-empted this timeline. That made sense then, but now, it's irrelevant. The Parks can't spend the money without approval of the Board of Trustees.

Mr. Blanchard called the question.

Vote of the motion:

Ayes: Barnett, Becker, Blanchard, McCardell, Stout, Van Agen

Nays: Ferriolo, Russell

MOTION CARRIED.

Ms. Buxar agrees with taking a break on the whole bridge project. Mr. Mikolajczyk is sorry for the way things came in, and they did the best they could to estimate what was going to happen. The volatility of the market is hard to know based on bids that were placed last November. He is sorry about what happened, but can come up with a good plan to save money on the next phase. Ms. Russell thanked him for his response. Ms. Myers added she has been working with Ms. Milos-Dale about possible private grant opportunities; their next grant cycle is in September, so if we re-bid in October she will have a better answer from them to see if they will help cover any price difference. Mr. Mikolajczyk also talked with the contractors who felt if we bid later, they wouldn't necessarily have a lot of work lined up for next year, so it might be in their favor to do so. Ms. Myers reminded Commissioners to respond as to what dates work for a joint meeting.

APPROVAL: Limited Use Permit Application & Procedures: Ms. Myers indicated last month the Ad-Hoc Committee gave a proposal for an application process for the Limited Use Access to the Trail. The Commission wanted a month to review it. Ms. Myers indicated Ms. Olijnyk had some suggestions, and a copy of the most updated version was given to the members tonight. Ms. Myers recommended the Commission consider approving the application and the associated procedures. Mr. Van Agen feels this is a nice application.

MOTION by Stout, seconded by Ferriolo, *Moved*, to accept the amended application.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION: Iron Belle Trail Grant Project & Memorandum of Understanding: Ms. Myers indicated the DNR want to give us money, so if there are questions about what was included in the packet she will answer them. She has no issues with the paperwork – the DNR are basically saying if we spend \$25,000 following the rules, they will reimburse the money. The

Commission needs to officially accept the project agreement with the DNR and sign the Memorandum of Understanding.

MOTION by Blanchard, seconded by Stout, *Moved*, to accept the Iron Belle Trail Grant project agreement with the DNR and sign the Memorandum of Understanding.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION: Commitment of the Trailways Commission to ask Ms. Hamameh to appear in a closed session for discussion: Ms. Russell said when she brought this issue in front of her City Council, it was asked immediately if the Commission had their attorney's opinion to support it. Whenever we go before any body we have our own attorney's opinion and it's discussed before any decision is made. It is important to have this discussion and have the disclosure information given to the Commission from the attorney instead of being vague. Mr. Ferriolo agrees, and said no matter what the Commission decides, we need to hear from our attorney. He feels the Commission has an obligation to hear the attorney. We make the decision, but he wants to hear what she has to say. He has only seen one opinion letter, and the attorney referenced five that were made in reference to this issue, and he wants to read all five and be prepared to ask questions of the attorney. Ms. Myers has copies of all the opinions. Mr. Barnett said one thing he requests if the Commission is going to do this, is that he thinks the Township attorney has a different opinion and does not represent the Trailways – and thinks the Village attorney has a different opinion who also does not represent Commission. He said the Township attorney has talked to the Commission attorney and she is open to his input, assuming that she has permission to talk with him. He requests this, does not see the harm in it, and would be no cost to the Commission. The attorneys spoke on the phone, and she said she would be happy to get his input, but would want permission from the Commission to discuss the issues. Ms. Olijnyk said there seems to be a lot of questions and confusion, and thinks it's important that the Commission meet with the attorney as soon as possible to ask questions. She supports meeting with the attorney. Ms. Russell supports the concept of meeting with the other attorneys after we meet with our attorney, as we are comprised of several communities. All the other attorneys would have to be in play, it would not be fair if any opinions were exposed to just one attorney. She suggests that the Commission meet with their attorney first, get questions answered and then go out further if need be. Ms. Buxar agrees with Ms. Russell, and the one attorney the Commission should hear from is the one who represents us. She feels some people still have questions of the attorney, and then they may support waiving the attorney client privilege. Ms. Myers spoke with Ms. Hamameh today who indicated she spoke with Mr. Kelly. Mr. Kelly has indicated he has not provided any written opinions on this to Orion Township. Ms. Hamameh also asked permission to be able to discuss not the actual written opinion itself, but the issues in it as she doesn't want to waive attorney client privilege. She did suggest that the Commission could consider doing that as well. Mr. Barnett said the issue the Commission attorney has with the potential interlocal agreement between the Township and the Village, which they would do as their own choice, was discussed with Mr. Kelly to get his input. Mr. Blanchard indicated the Commission needs to meet with the attorney as soon possible. Ms. Myers commented she would be available on 5/21, 5/22, and depending on when the joint meeting is scheduled, she might be available on 5/23 or 5/24. Another option would be to hold this discussion at the June 19th regular meeting, or we could look for another date the first week of June. Mr. Blanchard suggested the discussion occur when the joint meeting is scheduled. Mr. Ferriolo said there may be no need for additional discussion after the meeting with the attorney – we need to meet with our attorney first. We could come out of that meeting and suggest that our attorney have a discussion with any other attorney that wants to weigh in on it. He suggests that that's what the Commission should wait to do, rather than have any additional voting here. The only thing we need to do here is meet with the attorney as quickly as possible. Ms. Russell does not want to compromise the attorney client privilege at this point, to keep it as clean as possible. Ms. Olijnyk feels we need to give the

attorney directions on what kind of discussions we need, so that's why meeting first would best. She is not sure there is a consensus of the board right now. We need to meet first and then everyone together can figure out how to go forward. Mr. Becker said he will vote against this motion – the subcommittee has been meeting and getting opinions from the attorney for over a year. He feels the attorney has made comments to the committee, the committee responded to every one of the comments. He is opposed to some of her suggestions. There are things he's concerned about, the committee has responded to everything, but feels our attorney has an issue with one issue only, and believes it can easily be resolved with a document satisfactorily. He doesn't want to spend any more time to have an attorney tell him he has to go back and check and talk to other attorneys. He's prepared to move forward on the next item with accepting the license. Mr. Van Agen added he would like to see this issue come to a close, but feels the Commission needs a meeting with the attorney as she's been giving opinions with no opportunity for us to comment, and not providing an alternate to the issue.

Commissioner Gamage enters and becomes a voting member at 8:20 p.m.

Mr. Ferriolo said Mr. Becker's comments are extraordinary, and all the Commission wants to do is perhaps get to where he is, but feels he is preventing us from being allowed that opportunity. Mr. Ferriolo did not say he wants to hear from our attorney because he wants to agree with her. If the Commission agrees with Mr. Becker's sentiments, they will vote to accept the license, and if it doesn't agree, they won't accept it. Mr. Becker said he's free to express his opinion and to try and convince the majority of the Commission as to what he thinks the right course of action is. He understands Mr. Ferriolo disagrees with it, and he's not trying to insist on anything – he's trying to make a convincing argument so that four of the fellow Commissioners and he, can move forward on something he hopes we agree to move forward. If not, the Commission does not move forward. Mr. Barnett said he has followed this issue very closely and thinks the issues are overstated. He feels the Chairman has information that addresses the main remaining concern. You can deliberate something forever, and spend a lot more money on attorneys, but in the end, he has more comments on the next agenda item. He listened to the attorney's advice and sometimes they don't have all the right information, the fact that the Commission's received five different opinions - he feels those concerns have been answered. Delaying this further is a detriment to all the users of the trail. He agrees with the Chair, and will vote against the motion. Ms. Buxar said good points have been made, but the Commission should go into a closed session with their attorney to discuss matters, so that you have an open dialogue. She is not against the extension, but feels everyone wants to go into this with a clear conscience and hear what the attorney has to say and be able to ask questions. She sees this as being courteous to fellow Commissioners that they all have an opportunity to feel as comfortable as others do. She wants to hear what the Commission's attorney has to say, ask questions, and then move on. She doesn't know why it's that big of a deal. Ms. Russell said the trail will not be compromised in any way, whether we wait for attorney's opinion. When you have a body, it is the majority of the members that is make the decision. The Mayor, Supervisor or Chair should not take their own personal opinion and put it upon the rest of the board and force us that down the road. It doesn't look transparent. She knows this is not what the Chair is trying to do, but that's what it looks like. Her community has asked the Commission to have a face-to-face – it's not something that is abnormal to ask for. The problem is that the Commission has not had a face-to-face meeting with the attorney. The other thing is that an invitation was sent out about the ribbon-cutting on June 2nd to her mayor, but she had no knowledge of it. There is an item on the agenda about Village of Lake Orion Trail Extension, but nothing about a license – she did not know the Commission was voting on this tonight, because we haven't met with the attorney. Mr. Ferriolo said the Commission voted on the license agreement last month and it was approved conditioned on our attorney's written approval. Mr. Barnett said he is here as one voting member of the Commission

and also the Township Supervisor. He shares the sentiments of the other delegates and alternates from Orion Township. Orion Township is giving up some of their “rights” to help better the trail. He feels there is no rush here or trying to pull the wool over anyone’s eyes. He personally worked on acquiring the easement from the lumber company for three years. Right now the trailhead is at KFC and Pizza Hut, and he has worked for the last three-five years to get this trail extension done, for it to be part of the Iron Belle Trail. They’ve invested \$150,000 in restrooms, adding a trailhead with a parking lot, at a trail that ends in a downtown not at KFC. People that use the trail don’t necessarily know what community they are in – it’s the Paint Creek Trail. We have to make a decision, and feels the Commission is not rushing that decision. The Township is willing to have a separate agreement to not open up the overall interlocal agreement that would satisfy this board, that passed by unanimous vote last month, and the motion does not say subject to attorney opinion. He wants to make a decision to say yes and move forward with this. Plenty of information has been shared and discussed - the Commission should be able to make this decision. Mr. Ferriolo pointed out the motion was conditioned upon the approval of the Trailways’ attorney. That’s what the Commission is trying to rescind tonight. Chairman Becker said the Commission has not yet tried to rescind that part – we may in the next item. To him, this is a public policy decision more than anything else. He feels it’s clear to everyone that the extension is a great idea, and we’ve been trying to do what is best for Lake Orion, Orion Township and the trail users in getting the new extension as part of the Paint Creek Trail. It’s to the best of all the entities and a wise public policy decision. This is not a rushed decision – there have been 12-13 open committee meetings. They’ve seen and talked about the opinions for 13 months. There’s a time and a process when wise decisions for the public and communities take precedent over nit-picking. He would never go against an attorney that said this was a wrong move. These are gray issues in the law – the relationship between Lake Orion and Orion Township. The committee has answered all the gray issues where in the interest of public policy, he believes the Commission has the information to make a decision. He is not in favor of another meeting with the attorney, because this will lead to further meetings. He will vote to accept the license on the next item, but will vote no on another meeting with the attorney because there is nothing to be gained. Mr. Ferriolo pointed out that Ms. Gamage is now the voting member from Rochester. Ms. Myers said if the majority of the Commission still wants to hear from the attorney, she recommends giving her permission to contact Mr. Kelly to discuss the issues, not the confidential opinions, but to discuss the particular issues she has and work them out. If we wait until after the next meeting, then the attorney will talk to Mr. Kelly and have to come back for another meeting. Ms. Myers feels it would be prudent for them to touch base prior to any closed session the Commission has with her.

MOTION by Russell, seconded by Blanchard, *Moved*, to maintain last month’s decision until the Paint Creek Trailways Commission meets with Attorney Hamameh in closed session within one month, and if prudent, to allow her to speak with Orion Township’s attorney about the issues, without giving up attorney client privilege.

Mr. Barnett clarified it will be up to the Commission’s attorney to decide if it’s prudent to talk to Mr. Kelly per the motion.

Vote on the Motion:

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

Nays: Barnett, Stout

MOTION CARRIED.

Ms. Gamage commented that she’s been on the Commission for 18 years and has been impressed that the Commission has always strived to come to a consensus. If you were to look back over all the decisions in the past, we did so unanimously almost all of the time. That’s because the Commission took the time and made the effort to make sure things were right for the community

and the railway, and made sure everyone felt that way as well. She appreciates taking the extra time, and it's very important for the Commission to do everything possible to make sure regardless of how long it takes, we are not losing anything by the taking extra time. So, if we have to talk to our attorney once or twice, it's the most important thing to come to a consensus for the community. She's very appreciative that the Commission is going forward in this manner.

DISCUSSION: Village of Lake Orion Trail Extension: Chairperson Becker said the Commission will discuss the latest updates regarding the trail extension and the license agreement. Mr. Ferriolo commented he agrees with everything that Mr. Barnett has said. He objected to several points up front, but they all have been clarified and fixed. He loves the park and thinks that everything the Village is doing is a wonderful thing. He does not want to give the impression the Commission is negative on this – he's very positive on this issue. He feels we are headed in the right direction. He wants to hear from the attorney, but doesn't know if he's going to agree with her. He wants to respect the Chair's decision on that he's already made a conclusion and decision. He objects to trying to force his conclusion on him before this Commission has an opportunity to come to the same conclusion that he has. Chairperson Becker added that Mr. Ferriolo was one of the first and earliest supporters of the trail extension – and it's incorrect for him to say he's trying to force his opinion on Mr. Ferriolo. He's confident that once the legal issues are worked out, Mr. Ferriolo will take a positive look at it. Ms. McCardell asked if the Orion Township attorney has provided a written legal opinion on the license agreement. Mr. Barnett said they have discussed it openly for more than 13 months, but there is no written legal opinion and the Township wouldn't have come this far. As part of the TAP grant to get the trail extension, it's designated as a trailhead for the Iron Belle Trail. He thinks there is some frustration because some Commissioners have a lot more knowledge and worked on this for many years than others. Orion wouldn't have gotten a TAP grant or the money from the state to build the extension if there was any thought that they would not have this agreement. There are lots of opinions from Orion's attorney, but don't necessarily line up with all of this. Ms. McCardell asked why. Mr. Barnett said the Commission is here to give their opinion and explain why. He appreciates everyone's comments. He doesn't see it as someone trying to force their way over on someone else. Not all Boards are going to be unanimous. Orion's spent a lot of time with the Village and the Township and the attorneys to figure out if they can make this agreement work. It's been his opinion that once this was worked out, that was basically the end of it. They have worked it out. They haven't always agreed on this issue, but the Township and the Village have gotten to the point where they are aligned. He's not behind the event, and does not know why it's being promoted this way – the grand opening of the trail extension. Ms. McCardell said this is a very emotional issue – you want good things for the community. Her reason for being on a board is not so much giving her opinion, but to make sure that she is handling taxpayers dollars appropriately and within the law. Mr. Barnett commented that what Ms. McCardell is saying is that she appreciates his emotion, but takes to heart taxpayer dollars. So, he definitely has a strong opinion and bases every decision on what's right for the taxpayers as well. He has worked on this project since 2012, and he's proud to get to this point, and does not feel anything has been short-cut. Ms. McCardell just wants the best for her community. Ms. Olijnyk added what has been done is beautiful between Atwater through the extension, whether it will be part of the trail or adjacent to the trail. The Commission wants to make sure what they do is correct, that's why the attorney needs to look at it, even though the Village and Lake Orion have also looked at it. The Commission is doing their due diligence. She asked for clarification regarding ownership and easements, as they are different things. Chairman Becker said we're dealing with both – for a short segment, there is an easement involved, but there is also ownership by the Village. The committee is aware of that and has received assurances by the Village to the committee's satisfaction, that the easement segment is permissible for a license. Mr. Blanchard commented he has been on the Commission for over 20 years, and when he was at Orion Township, this issue

was discussed. He had discussions with Lake Orion Lumber. So he is behind getting this done. His original motion was not to have it contingent on the attorney's opinion, but with the discussion, there was no way that was going to pass, that's why the motion was changed. He congratulates the Township and the Village for getting to this point, because there was a time, the communities would have not reached that agreement. He's sorry if they feel they are being put off, but they are not. The Commission just wants to meet with their attorney to get questions asked, and they will make their decision. It may not be what the attorney wants us to do, but we will have all the answers we need. He feels it will turn out OK. Chairperson Becker commented that the trail opening will occur before the next meeting. Ms. Myers indicated several months ago, that the National Trails Day Celebration would be in Lake Orion because of the expected bridge construction, and agreed to partner with the Village DDA because of the commitment to this extension, and have the ribbon-cutting as part of the celebration. It will be part of the recognition ceremony and recognize Lake Orion Lumber, who will be getting one of the spikes, as well as the Lake Orion DDA and a few supporters who have financially contributed to the trail. So, it's a way for the DDA to officially open the extension and for us to work together to work on a joint National Trails Day event celebrating the extension and the Iron Belle Trail head. Mr. Becker asked if there was any objection for this event to move forward, because it was expected the issue would be resolved by now. There is no objection to the event. Ms. Gamage asked if this is a new trail or are we saying it's an extension of the Paint Creek Trail. How is this being promoted, because she does not feel it should be promoted as part of the Paint Creek Trail. Ms. Myers said the invitation says "celebrating the extension of the Paint Creek Trail and dedicating a new Iron Belle Trailhead at Children's Park in Lake Orion". Mr. Becker asked if we could move ahead as the Commission is saying this is permissible to do. Ms. Gamage feels very strongly that we proceed without this being the Paint Creek Trail, that this is not stated during the celebration, that it is an extension of the trail, not Paint Creek Trail. Ms. Myers indicated it's reported as an extension of the Paint Creek Trail. Ms. Russell has known the lumber family for years, and it wouldn't be fair to them not to acknowledge the beauty of Atwater piece. The Commission is coming together to make all this work, and it's the first time she's heard that the TAP grant was associated with the trail extension. These are pieces that are important to communication. Mr. Becker indicated the TAP grant was given to the DDA, and not something the Commission was aware of. Mr. Barnett explained it had to do with the Iron Belle Trail and the extension of the trail. Ms. Myers stated the DDA got the TAP grant for the extension at the time the Iron Belle concept was still being worked out. It was after bids went out and constructions were built, that the Village was sad to learn that the actual Iron Belle connection wasn't going through the Village. There was a large meeting, and it was agreed that even though the official connection was on Clarkston Road, that we would OK having the official Paint Creek Trail Iron Belle Trailhead in Downtown Lake Orion, in the Village. The DNR's Iron Belle Trail Coordinator was at that meeting, and said they had no problem with that. So it wasn't really a part of the TAP application, it was an after-the-fact, once they started looking closer to how we can best connect with the Polly Ann Trail through Orion Township, and the hard work Orion Township has done on their grant applications to make pathways to the Paint Creek Trail. It's a tri-party issue to be able to say the Village is part of an important segment of the Iron Belle Trail. Mr. Barnett added that the project was delayed and they had to ask for an extension. One of the selling points was at that point they were able to say a benefit of this project will be to get people onto the Iron Belle Trail. Ms. Russell said this is the communication she is talking about – it's got to be clear and in front of this board and when things change, that is the responsibility of the subcommittee to make these reports. She's not blaming anyone, but communication is key so everyone totally understands what the Commission's responsibility is and how to move forward and do their due diligence, and not to compromise anything that we have worked hard to keep that integrity in place. No further action is required.

APPROVAL: Labor Day Bridge Walk – September 3, 2018: Ms. Myers reported this will be the 13th annual event. There is a reduction in the special event application fees – instead of \$100, it's \$75, but we also need a \$35 check for the Kiwanis Pavilion – so the total proposed budget is \$1,940. A copy of the application to be submitted to the City of Rochester is included in the packet. She is looking for a motion to have the event on Monday, September 3rd, and to submit the application to the City of Rochester with the fee of \$75. She wants the Commission to suggest where the suggested donation of \$5.00 per family should go to and would like to have a volunteer coordinator and event sponsor coordinator like last year – this would be very helpful. The Commission can decide, not necessarily tonight, whether they want to do something with the promotional \$1,000 budget. Ms. McCardell reported that Dr. Bowyer said she would be the volunteer coordinator. Mr. Ferriolo also volunteered for the event as the sponsor coordinator. Ms. Russell suggested the \$5.00 donation should be put toward the new bridge. Chairman Becker said this money could be better used locally, but it's a Commission decision. Suggestions for promotional items will be brought back next month.

MOTION by Ferriolo, seconded Blanchard, *Moved*, to have the Labor Day Bridge Walk on September 3, 2018, and to submit the application and fees.

Ayes: All Nays: None

MOTION CARRIED.

MOTION by Blanchard, seconded by McCardell, *Moved*, that the donations be put toward the bridge project.

Ayes: All Nays: None

MOTION CARRIED.

UPDATE: National Trails Day – June 2, 2018: Ms. Myers said the Commission already touched on this briefly. The invitation states the Commission will be recognizing Lake Orion Lumber, Lake Orion DDA, Kim Carpenter from Rochester Plumbing and Heating for all the volunteer work he's done on the Tienken drinking fountain – installing and maintaining it at no charge, Steve Johnson from the Motor City Brew Tours, who, as of their successful event last weekend, has donated over \$24,000 to the Friends group for trail improvements in six years, and lastly, Joe Burns, from Back to Beach Runners, who have financially contributed to the trail, and have also funded the drinking fountain at Tienken as well as several bike fix-it stations. She would also like to have everyone from the Village, Orion Township and Lake Orion Lumber actually cut the ribbon in front of the Orion Arts Center welcoming the extension and the Iron Belle Trailhead. After that, there will be a family walk and bike ride from Children's Park to Clarkston/Kern and back. There will be free ice cream coupons from 20 Front Street Creamery. Dinosaur Hill will be at the park through the event providing a free hiking stick craft for anyone that wants to do it. The event is from 9:00 till 12:00 on Saturday, 6/2. Unfortunately, there is another event going on up in Oxford at the same time – they are renaming the bridge over M24 the Larry Obrecht Bridge at the Polly Ann Trail from 10:00 until 12:00. Posters and press releases have been released to promote the event. Ms. Myers added it's been a pleasure working with the DDA on this project. Mr. Barnett added that everyone can look at the fire station renovation and know that's where the new trailhead parking will be and the public restrooms.

MOTION by Barnett, seconded by Stout, *Moved*, to receive and file the report.

Ayes: All Nays: None

MOTION CARRIED.

DISCUSSION/APPROVAL June 19, 2018 Meeting Location and Field Trip: Chairperson Becker always suggests the Commission conduct one site visit annually on the trail to become more familiar with the physical reality of the trail. He recommends that we go to the proposed location for the new Cider Mill Gateway project, right behind the Flagstar Bank. The Commission may decide to move the meeting to the Paint Creek Cider Mill, and after the meeting go on the site visit. Mr. Becker indicated he will not be in attendance at the next meeting.

MOVED by Van Agen, seconded by McCardell, *Moved*, to move the June 19th meeting location to the Paint Creek Cider Mill.

Ayes: All Nays: None

MOTION CARRIED.

MANAGER'S REPORT: In addition to her written report, Ms. Myers added there was a small robbery at the Cider Mill Restaurant today – a gentleman reached in and took off with the tip jar. Ms. Myers will be meeting with the Friends Group tomorrow at 2:00, with the Motor City Brew Tours at Clubhouse BFD, so they can present their \$5,000 check to the Friends Group as their donation from their successful event. The newsletter was put on hold because of the bridge delay. She thinks a newsletter should still be put out but wants to change the title page to explain how the plan has been delayed. The consensus is that the newsletter should be sent out.

COMMISSIONER REPORTS: Mr. Barnett said they are diligently working on the final connection to tie the Paint Creek and Polly Ann Trails together, and is extremely excited about it. They are applying for the largest TAP grant in history – over 2 million dollars. They have gotten support from all the people that matter. A decision will be made by June 12th. Ms. Russell said the comfort station in Rochester Park will open soon. They completed a repair on the bike station. She reported that Dillman and Upton cut all the trees down along the trail. Ms. Myers will review their license agreement. Mr. Blanchard suggested a map be drawn showing the new trail connection. Mr. Stout thanked Mr. Van Agen for his part in the ad hoc committee for the limited use permit application as it gives the Commission some control over what's done on the trail. Ms. McCardell thanked the application committee for their worked and congrats to Mr. Barnett on his grant application. Ms. Olijnyk thanked all the subcommittees for all their work, and the staff for their work on the bridge project. Ms. Gamage had the Girl Scout adopt-a-trail clean up since the last meeting and everyone really enjoyed it. She thanked the Commission for the Girl Scout's opportunity. She also feels the Dillman and Upton issue should be reviewed because the fence is being held up by tow-straps and 2 x 4's that are leaning on trail property. Mr. Young added that on June 2nd, at 3:00, the police department is having an event from 3:00 to 10:00 at children's park in the parking lot.

ADJOURNMENT OF REGULAR MEETING:

MOTION by Stout, seconded by McCardell, *Moved*, to adjourn the Regular Meeting at 9:25 p.m.

Ayes: All Nays: None

MOTION CARRIED.

NEXT MEETING: June 19, 2018 at 7:00 p.m. – Paint Creek Cider Mill

Respectfully submitted,

KRISTEN MYERS, Trail Manager

HANK VAN AGEN, Secretary