



Monday, August 10, 2009

Charlevoix County Planning Department  
Attn: Larry Sullivan  
301 State Street  
Charlevoix, MI 49720

Dear Larry,

When you attended our Road Commission meeting June 26, 2006 to explain the preliminary concept of a bike path along the Boyne City-Charlevoix Road, the Road Commission initially indicated its support for the concept of a path to be constructed apart from the roadway within the larger limits of the predominantly 99-feet of right-of-way.

Since that time, the Road Commission has had the opportunity to further review the nature of some of the right-of-way that exists along this roadway. In the late 1950's, the Road Commission obtained additional right-of-way along most of the Boyne City-Charlevoix Road. In many instances this extended the 66-foot width of this right-of-way to 99-feet wide. The Release of Right-of-Way form that was generally used to accomplish this provided that the "sole and only purpose" of this conveyance to the county was for a right-of-way "for highway purposes". We have enclosed a copy of a sample of the form that was used.

In response to this additional information, we have considered whether a separate path for non-motorized travel within the right-of-way is within the scope of the conveyance to the county "for highway purposes." Arguments can be made that such a use is within the scope of the conveyance. However, some Michigan courts have taken a narrower view of the scope of conveyances such as this. Therefore, the Road Commission cannot be assured that such a plan would be free from potentially legitimate judicial challenges involving properties along a significant portion of this right-of-way.

The Road Commission strives to do its best with limited resources to provide transportation facilities for the general public. In this instance, it does not believe that it is in the best interest to pursue a course of action that would lead to a significant controversy over the legal basis for the location of the path as previously proposed. Accordingly, the Road Commission finds it advisable to support right-of-way usage for non-motorized purposes only along paved shoulders of the road to be reconstructed along this route.

We therefore recommend that continued planning for a proposed bike path incorporate this new information and corresponding limitation.

Sincerely,

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Doug Way, Chairman

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Keith Ogden, Vice-Chairman

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Wayne Saunders, Member

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Patrick Harmon, Manager

Enclosures

cc: Chris Christensen, Charlevoix County Board Chairman

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Charlevoix

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Vice Chairperson  
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