

Non-Motorized Trail Steering Committee

Top questions/information needs

Update 6-21-10

1. What are the legal facts concerning placing the trail within the Boyne City/Charlevoix Road right of way? Where is the real right of way? Who will be liable in the event of legal action?
 - Non-motorized trails have been constructed within road right-of-ways for many years in Michigan. For example, Dave Langhorst of the Michigan Department of Transportation (MDOT) said "from a practical standpoint, we (MDOT) build non-motorized trails within our right-of-way, both attached and detached trails, we do not differentiate. We use federal dollars to build non-motorized facilities within highway right-of-ways, easement or outright ownership."
 - The road right of way is described in deeds and other documents filed at the Registrar of Deeds office. The right-of-way on most parcels is 3 rods (49.5 feet) on each side of the road centerline. On a small number of parcels, the easement documents define the right-of-way with a legal description rather than as a set distance from the centerline. Some have raised the question about what happens to the easement if the centerline of the road changed over time due to maintenance or road reconstruction. There is no official map or description, as far as we can tell, of the Boyne City Charlevoix Road centerline.
 - Discussions about liability for negligent actions related to a non-motorized trail can get complex in a hurry, but here are some general principles:
 - For landowners adjacent to a trail: Like a sidewalk, landowners are liable only for negligence they cause. For instance, courts have ruled that a landowner is liable if their dog runs onto a road or other public way and bites a person legally using the road (or trail). Michigan's Recreational Trespass Act (MCL 317.176) and Recreational Use Act (MCL 324.73301) further protect landowners from liability claims "unless the injuries were caused by gross negligence or willful and wanton misconduct of the owner, tenant or lessee."
 - For governmental agencies: Liability varies and is somewhat complex due to the "highway exception," which limits liability for governmental agencies with road jurisdiction, so long as the highway is in reasonable repair and is reasonably safe. Governmental agencies can reduce their exposure to liability claims through regular inspection and reasonable maintenance of the trail.

2. What are the legal property rights of the landowners along the proposed route?
 - There are many property rights, often called a "bundle of rights." Some of those rights can be given away or sold. A road easement is one of those rights. Exactly what portions of property rights were given depends on the easement language. In the late 50s and early 60s, the Charlevoix County Road Commission secured easements from nearly all landowners along the road extending the easement from 33 feet to 49.5 feet on both sides of the road

for “highway use.”

- Michigan’s governmental immunity statute, MCL 691.1401(e), includes this definition: *“Highway” means a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles.* The term “trailways” was added to the definition of “highway” in 1999.
 - Conflicts over interpretation of easement language often go to court. A common example in Charlevoix County is private shoreline access easements. Courts look at the language of the easement to determine intent. For that reason, the outcome of easement cases varies quite a bit. We could not find any reference to cases that specifically challenged placement of a non-motorized trail in a road right of way (although, to be sure, a complete search would have to be completed by a qualified legal professional).
3. Is the Boyne City/Charlevoix Road route the only one under consideration? What is the best route for ease of use and safety?
- This question is addressed in detail in the “History of Boyne City to US-31 Trail Efforts.” In summary, discussions regarding non-motorized routes throughout the county have been going on since the 1980s. A group convened in 2003 considered a variety of routes, settling on the BC/Charlevoix Road Corridor based on the perceived amount of traffic on this road, motor vehicle and non-motorized traffic, the "attractors" located along this route (Young State Park and Horton Bay), the available right-of-way and the ability to obtain funding for the specific route.
4. Where will the actual trail location be? Will it be attached or detached only, or a combination? Will it be exclusively within the right of way? Who determines the final route?
- The original conceptual plan placed the trail on the south (Lake Charlevoix side) of the Boyne City/Charlevoix Road, within the existing right-of-way. In some locations (generally those areas where larger parcels of land are located) it may be worthwhile to contact the property owners to determine their willingness to grant an easement to allow a greater separation of the trail from the road. There are also some properties along the potential route where homes and structures are close to the road. Alternate plans will need to be developed for those parcels.

Five areas along the route will require special treatment if the trail is located on the south side of the road. Those areas are as follows:

1. Evangeline Township where two single family homes are located very close to the Boyne City/Charlevoix Road.

2. Horton Bay where most of the homes or accessory structures are located close to the road. In this area, it would be most likely that the trail would actually be located on a wide paved shoulder. Placing the trail on a wide paved shoulder would be possible in this location and would be safe as opposed to having a wide paved shoulder along the remainder of the trail due to the low speed limits in Horton Bay (35 miles per hour versus 55 miles an hour on the remainder of the route).
3. The third area is by the Lake Charlevoix Farms Barn in Hayes Township. Due to the barn being very close to the road, the room may not exist to even have the trail between the barn and the road. This is currently a problem area for motorized traffic and discussions will need to take place with the property owner and the Road Commission to devise a means of resolving these concerns. The trail may need to be relocated to the north side of the road in this area.
4. The fourth area is in the vicinity of Susan Lake. A number of homes have landscaped, terraced and/or bermed to the edge of the ditch along the road. An option may be to run the trail south on Quarterline Road, go west along one of the residential roads on the south side of Susan Shores Subdivision and then bring the trail back to the Boyne City/Charlevoix Road via Charlevoix View Drive.
5. The fifth area is located in section 19 of Hayes Township, at the north end of Oyster Bay. A wetland area exist that will require a wetlands fill permit, a boardwalk or an alternate route. A potential alternate route could be running the trail north on See Road and then running the trail cross country to the northwest (via easements from property owners) to US-31 and then develop a crossing which would then allow the trail to connect with the Little Traverse Wheelway in the area of the Charlevoix Pool or the Charlevoix Country Club.

Should the trail be located along the north side of the Boyne City/Charlevoix Road, a number of special treatment areas exist as well.

1. The topography along the road in Evangeline Township is an issue. While topography issues can be dealt with, it could have the impact of greatly increasing the construction costs for the trail.
2. The same issues exist in Horton Bay on the north side of the road as on the south side.
3. Undine Cemetery is very close to the road on the north side and as a result, the Road Commission only has a 33 foot right-of-way on the north side of the road in that location.
4. Susan Lake is very close to the Boyne City/Charlevoix Road and would the park along the lake would be impacted.

- The final route and project must be approved by the County Board of Commissioners after recommendations by the County Parks Committee.
5. What research demonstrates that a trail will increase safety? What are the safety measures in areas where the road and trail meet?
- We are still working on the question of research demonstrating differences in safety between attached and detached trails. There are many design manuals and techniques for reducing safety risk points such as road intersections, driveways and limited distance areas.
6. How will construction and ongoing maintenance be funded?
- The total cost of the trail at today's costs is estimated to be 3.4 million dollars. It was originally envisioned that phase one of the project which would take the trail from within the Boyne City limits to the eastern boundary of Horton Bay was estimated to cost \$1,350,000. Of this amount approximately \$53,000 was being requested of Boyne City, Evangeline and Bay Townships. Another equal amount was to be raised from private sources such as foundations, civic groups and private individuals. Funds for the balance of the project were being sought from the Michigan Natural Resources Trust Fund and the Federal Transportation Enhancement Fund (administered by the Michigan Department of Transportation).
 - Estimates for trail maintenance are between \$2,100 and \$3,560, based on Charlevoix County Parks Department maintenance costs on the Little Traverse Wheelway. This estimate does not include equipment costs or major repairs. A 2007 study by Public Sector Consultants estimated maintenance costs for mid-level trails (the Little Traverse Wheelway is a mid-level trail) from \$984 to \$1,453 per mile each year.
7. What are the environmental impacts of the trail?
- The environmental impact is difficult to generalize, since impacts are very specific to each property and can be minimized through design. Overall, a 10 ft. wide, 14 mile trail would lead to an additional 17 acre paved surface. There are positive impacts from potential reduction on vehicle use, but this is likewise difficult to quantify.
8. How are property owners being informed about this process?
- Direct mailings have been made to all property owners of record that own property on either side of the Boyne City/Charlevoix Road informing them of the process and giving them the opportunity to keep informed via the following options:
 - Join the e-mail list. The steering committee will send occasional updates via e-mail. Go to www.charlevoixcounty.org and click on the sign-up link to join.
 - Receive updates via postal mail. If you don't get e-mail, complete the attached form and send it to the address at the bottom of the page and you will receive updates via postal mail.

- Check out the Charlevoix County website. Information about the trail and steering committee will be posted at www.charlevoixcounty.org.
- Look for announcements about another public forum. The date isn't set yet, but the steering committee intends to host another forum late this summer.

Updated by Dean Solomon, MSU Extension 6-21-2010.