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The Marquette County Board of Commissioners met in Regular Session on Tuesday, November 18, 2008, at 6:00 P.M., in Room 231 of the Henry A. Skewis Annex, 234 W. Baraga Avenue, Marquette, Michigan.

Chairperson Corkin called the meeting to order. Present: Comm. Arsenault, Comm. Cihak, Comm. Joseph, Comm. Pellow, Comm. Struck and Chairperson Corkin. Absent and Excused: Comm. Bergdahl, Comm. Heikkila, Comm. Wallace.

A Salute to the Flag was given followed by the Pledge of Allegiance.

It was moved by Comm. Pellow, seconded by Comm. Arsenault, and unanimously carried by a voice vote that the minutes of the County Board of Commissioners Special Meeting held on October 28, 2008, and the County Board of Commissioners Regular Meeting held on November 4, 2008 be approved.

It was moved by Comm. Arsenault, seconded by Comm. Joseph, and unanimously carried by voice vote that the Agenda be approved as presented.

Chairperson Corkin opened the meeting for public comment. Jim Brennan, Republic Township Resident, addressed the County Board and distributed an informal petition for repair of County Road 601 from M-95 in Humboldt Township to Fence River Road in Witch Lake. The petition contained the signatures of 260 registered voters of Republic Township, who would like to see repair to these roads included in the Marquette County Road Commission's 2010 budget.

Al Reynolds, Midway Drive, Negaunee, requested permission to speak to Item 10a) the Proposed New County ORV Ordinance.

There being no further public comment, Chairperson Corkin closed this portion of the meeting.

It was moved by Comm. Joseph, seconded by Comm. Pellow, and unanimously carried by voice vote that Claims and Accounts for the period November 7, 2008 through November 13, 2008 in the amount of \$363,783.97 be approved.

INFORMATIONAL ITEMS

It was moved by Comm. Arsenault, seconded by Comm. Struck, and unanimously carried by voice vote that the following Informational Item be accepted and placed on file:

- 9a) Regional Economic Development Project Nominations.

ACTION ITEMS

10a) The County Board considered the Proposed New County ORV Ordinance. Al Reynolds, Midway Drive, Negaunee, stated that the issue with the Ordinance regarding ORV's operating on the maintained portion of County Roads is not a major issue. He urged the County Board to pass the Ordinance.

The following memo was distributed to Commissioners explaining concerns that Harley N. Andrews, Chief Civil Counsel, has about the statute and any ordinances enacted pursuant to it:

MEMO

To: Marquette County Board of Commissioners

From: Harley N. Andrews, Chief Civil Counsel

Re: Proposed ORV Ordinance

Date: November 17, 2008

Commissioners,

I assume that you have all received the email from Mr. Al Reynolds, with its attached emails from one Dick Ranney, who is apparently a lobbyist for the ORV community and was involved in securing the passage of Act 240 of the Public Acts of 2008, the new statute authorizing local ORV ordinances. In his email, Mr. Ranney purports to offer "the truth" about this legislation, which he indicates has apparently been questioned "... in every county." However, instead of substantively dealing with the questions raised, he offers political explanations and allegations about CRAM, and suggests that you should contact the MAC legal staff and lobbyists. You of course may do that, but if you do I request that you provide them with a copy of this Memo, so that my concerns about that statute and any ordinances enacted pursuant to it will be explained in my words, and not as Mr. Ranney or others might interpret them.

Clarity

It is axiomatic that any statutes or local ordinances, particularly those which provide penalties for violation, must be as clear and unambiguous as possible so that those who must obey them and those who must enforce them can know exactly what conduct is permitted, and exactly what conduct it prohibited. Public Act 240, in authorizing local ordinances allowing the operation of ORVs on the far right of "...the maintained portion..." of County roads, simply does not provide that required clarity because the term "maintained portion" is not defined in the statute.

Mr. Ranney asserts in his email that his clients wanted the legislation to provide that ORVs could ride "... between the fog line and where the end of where the grader blade went when they graded the shoulders." Such language would not have addressed those County roads which have no pavement, fog line or shoulder, and the legislature did not adopt that requested language in any event. So, in the absence of a specific definition of the term "maintained portion" entities adopting an ordinance, riders seeking to comply with an ordinance, and those responsible for enforcing such an ordinance are left to guess what that term means. To the extent that their resources allow them to do so, County Road Commissions maintain the traveled portions of their roads; they maintain the shoulders of their roads that have shoulders; and, they sometimes maintain areas beyond the shoulders which may require mowing, brush clearing, or drainage maintenance.

The definition of where local ordinances may allow the operation of ORVs should be provided by the legislature in clear and unambiguous terms. Such a definition should take into account and provide for County roads which have no shoulders, and which are not paved or marked. When the legislative intent has been

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clarified by such definitions, then local units of government can enact ordinances that will comply with that intent. As I previously advised you, Counties have very limited ordinance authority. When the legislature does grant Counties the authority to adopt certain ordinances, the Counties must exercise that authority within that grant. In this case, where the legislature has indicated that Counties may adopt ordinances authorizing the operation of ORVs on the far right of the "maintained portion" of County roads, that is the language which the ordinance must use. We are not free to make up our own definitions of what we think that undefined term may mean.

My concerns about this legislation and any ordinance adopted pursuant to this legislation have nothing to do with any political wrangling between CRAM and the ORV community, but are instead based on the absence of legislative clarity, which adversely affects those who must obey and those who must enforce such laws and ordinances.

Safety

The absence of an appropriate definition also has implications for the safety issues relating to this legislation. The two primary safety issues concern the machines themselves, and the operation of those machines in close proximity to other vehicular traffic on County roads.

Machine Safety.

In my Memo to you dated November 6, 2008, I included information from the analysis of Public Act 240 prepared by the House Legislative Analysis Section which indicated that most ORVs are not safe for operation on paved surfaces, and that both the Consumer Product Safety Commission and the Specialty Vehicle Institute of America (a group representing ATV manufacturers) have recommended that ATVs be banned from use on paved roads. Further, Mr. Tom Myers, a representative of the local ORV community who spoke at your public hearing, agreed that these machines are unsafe for operation on paved surfaces. If it is the intent of the legislature that "maintained portion" means paved portion, whether paved for vehicular travel or a paved shoulder, then an ordinance adopted pursuant to that statute would be requiring operation of ORVs only on those portions of the road which virtually everyone agrees would be unsafe for such operation. If that is the intent of the legislature, you should know that as you consider whether to adopt such an ordinance.

Traffic Safety

In addition to the issues of machine safety, there are issues of traffic safety, which may be more or less significant depending on a clear legislative definition. The statute, and consequently any ordinance, would allow the operation of ORVs on County roads by children as young as 12 years of age, and limits the speed of such operation to not more than 25 mph. Sheriff Lovelace and Undersheriff Schneider, during your public hearing, expressed traffic safety concerns about these provisions. Depending on how "maintained portion" is defined by the legislature, especially with respect to proximity to regular vehicular traffic, those concerns may be somewhat alleviated, but without such a clear definition this safety issue remains, at best, unresolved.

Recommendation

As requested, I prepared for your consideration a draft ORV ordinance, based on the version distributed by MAC. I did not recommend, and am not at this time recommending, its adoption in its present form for the reasons discussed herein. Unless there is some great urgency in adopting some kind of ordinance, I recommend that you defer action on this ordinance in order to give the ORV community, CRAM, MAC, and any other interested parties time to seek amendment of this legislation to provide a clear definition of where ORV operation is to be allowed, taking into account all types of County roads including paved or unpaved, marked or unmarked, and with or without shoulders. Only when you can clearly determine exactly what it is that you are authorized to allow can you then determine whether or not you wish to allow it.

HNA

Discussion followed. Comm. Cihak, stated that he could not support the Ordinance as written until the Section regarding the maintained portion of the roads is clarified.

It was moved by Comm. Pellow, seconded by Comm. Arsenault, and carried by voice vote, 5 Ayes (Comm. Arsenault, Comm. Joseph, Comm. Pellow, Comm. Struck, and Comm. Corkin), to one Nay (Comm. Cihak), that the County Board Adopt the New County ORV Ordinance, and that the Ordinance shall become effective the day following publication of notice of its adoption in a newspaper of general circulation in the County, and unless otherwise amended shall remain in effective until July 18, 2013, after which it shall be null and void and of no further force or effort, and further send letters to MAC and legislators for clarification on MCL 324.81131(2) "maintained portion of the roads".

It was moved by Comm. Arsenault, seconded by Comm. Cihak, and unanimously carried by voice vote that Action Items 10c), 10d), and 10e) be approved as follows:

10c) Committee of the Whole recommendation to adopt the Resolution Supporting Michigan Small Harbors Coalition (MSHC).

10d) Committee of the Whole recommendation to adopt the following Proposed Big Bay Harbor of Refuge Fees for 2009 for state transient rates, and request to the State that our seasonal rates be set the same rate as in 2009.

BIG BAY HARBOR OF REFUGE

SEASONAL MOORING FEES

FROM MAY 15 TO OCTOBER 1, AND WHEN AVAILABLE, CONTINUOUS DOCKING FACILITIES MAY BE OBTAINED BY CONTACTING THE MARQUETTE COUNTY RESOURCE MANAGEMENT/DEVELOPMENT DEPARTMENT. MONTHLY OR WEEKLY RATES MAY BE PRO-RATED AS A PORTION OF THE TOTAL OPERATING SEASON.

- A) *AT THE CONSTRUCTED SEA WALL: \$20.30/FOOT OF BOAT LENGTH**
- B) *AT THE EMBANKMENT AREA EAST OF THE CONSTRUCTED SEA WALL, 75% OF THE RATE IN A) ABOVE.*
- C) *FOR COMMERCIAL BOATS (CHARTERS), THE RATE IS TWICE THE RATE ESTABLISHED ABOVE.*

MOORING FOR A 24-HOUR PERIOD (TRANSIENT RATE)

BOATS LESS THAN 25 FEET IN LENGTH..... (FLAT RATE) \$21.00

<i>Feet</i>	<i>Fee</i>	<i>Feet</i>	<i>Fee</i>	<i>Feet</i>	<i>Fee</i>	<i>Feet</i>	<i>Fee</i>
25 feet	\$22.00	30 feet	\$28.00	35 feet	\$33.00	40 feet	\$40.00
26	23.00	31	29.00	36	34.00	41	41.00
27	24.00	32	30.00	37	36.00	42	42.00
28	26.00	33	31.00	38	37.00	43	43.00
29	27.00	34	32.00	39	38.00	44	44.00
<i>Feet</i>	<i>Fee</i>	<i>Feet</i>	<i>Fee</i>	<i>Feet</i>	<i>Fee</i>	<i>Feet</i>	<i>Fee</i>
45 feet	\$46.00	50 feet	\$57.00	55 feet	65.00	60 feet	
46	47.00	51	58.00	56	66.00	And over	\$1.40/ft.
47	48.00	52	59.00	57	67.00		
48	49.00	53	60.00	58	68.00		
49	50.00	54	62.00	59	70.00		

10e) Committee of the Whole recommendation to authorize the Employment Agreement with Dwight Sunday, Equalization Director, for January 1, 2009 through December 31, 2010.

ACTION ITEMS CON'T.

10b) The County Board considered a Committee of the Whole recommendation to confirm support of the Michigan Tobacco Reduction Resolution.

It was moved by Comm. Pellow, seconded by Comm. Struck, and carried by voice vote 5 Ayes (Comm. Arsenault, Comm. Cihak, Comm. Pellow, Comm. Struck, and Comm. Corkin), to 1 Nay (Comm. Joseph) that the County Board confirm its support of the Michigan Tobacco Reduction Resolution and request that members of the Michigan Legislature take effective action to promote and achieve the following funding resolution as quickly as possible:

MIICHIGAN TOBACCO REDUCTION

RESOLUTION

WHEREAS: Every year more than 18,000 Michigan children become addicted to tobacco, of whom a third will die prematurely because of this addiction. This year more than 14,000 Michigan residents will die from tobacco use and thousands more will suffer from illness and health problems caused by smoking and secondhand smoke. Smoking-caused health problems cost Michigan a total of more than \$3.4 billion per year, including more than \$1.1 billion paid for by the state Medicaid program with taxpayer dollars;

WHEREAS: The U.S. Centers for Disease Control & Prevention and other experts have established that: 1) fully funding state tobacco prevention programs; 2) increasing taxes on tobacco; and 3) prohibiting smoking in workplaces, including restaurants and bars; substantially decrease smoking and other tobacco use, particularly among children, thereby reducing tobacco-caused harms and costs;

WHEREAS: Michigan's tobacco prevention efforts are effective and should be expanded to serve more Michigan residents. The efforts of the Michigan Tobacco Prevention Program and its many local partners has resulted in a 52.9% drop in Michigan high school smoking since 1997 and a 19.5% drop in adult smoking over the same time period.

WHEREAS: Michigan receives more than \$290 million in settlement payments each year from the tobacco companies, yet none of these settlement dollars are used to fund the Michigan Tobacco Prevention Program;

BE IT RESOLVED: That the undersigned endorses comprehensive and effective public policy measures to prevent and reduce smoking and other tobacco use in the state, particularly among children, and that foremost among those should be:

Funding for Michigan's Tobacco Prevention Program at a minimum of \$12/person annually, the level recommended for Michigan by the Centers for Disease Control and Prevention.

The Marquette County Board of Commissioners confirms its support for each and all the above statements and requests that members of the Michigan Legislature take effective action to promote and achieve the above funding resolution as quickly as possible. The undersigned also authorizes and encourages Tobacco-Free Michigan to use this signed Resolution to promote the above-stated funding objective.

*Adopted this 3rd day of June, 2008
Gerald O. Corkin, Chairperson
Marquette County Board of Commissioners*

10f) The County Board considered a communication from Jim Iwanicki, Marquette County Road Commission, regarding a funding opportunity for CR 426 and CR 557. Comm. Struck explained that there is a

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possibility that there will be another economic stimulus package being released, with a large part of the package going toward our nation's transportation infrastructure. The Marquette County Road Commission strongly supports the stimulus package and the need for infrastructure funding.

Comm. Struck further explained that if the opportunity is available the Marquette County Road Commission would like to use some of the special funding to rebuild CR 426 and CR 557 to an all season trucking standard. The Road Commission has been working on plans to improve CR 426 and CR 557 in the southern part of Marquette County for many years, and obviously it is a very expensive endeavor. Without federal funding it will be hard to get this project accomplished.

Comm. Struck further explained the Road Commission voted unanimously to send a letter to Representative Stupack, Senator Levin, and Senator Stabenow, asking them to consider the funding.

It was moved by Comm. Struck, seconded by Comm. Arsenault, and unanimously carried by voice vote that the County Board also send a letter to our Federal Legislators in support of the Road Commission's request for the economic stimulus funding to rebuild CR 426 and CR 557.

Chairperson Corkin opened the meeting for public comment.

Jim Brennan, Republic Township resident, explained that there is funding available in Lansing for roads. Chairperson Corkin responded. He explained that there are economic development monies in the transportation fund, but that the fund is dwindling.

Comm. Struck explained that the State Transportation Task Force wants the funding passed during the lame duck session.

Al Reynolds, Midway Drive, Negaunee, thanked the County Board for passing the ORV Ordinance. There being no further public comment, Chairperson Corkin closed this portion of the meeting.

COMMISSIONERS COMMENTS, STAFF COMMENTS AND ANNOUNCEMENTS

Chairperson Corkin reminded Commissioners of a meeting with Mental Health, Thursday, at 10:00 a.m., on jail services.

There being no further business to come before the County Board, the meeting adjourned at approximately 6:30 P.M.

Respectfully Submitted,

Connie M. Branam
Marquette County Clerk