

Chairman Brown called to order the Regular Meeting of the Cheboygan County Road Commission at 8:00 A.M.

Clerk D. Stempky took roll call and a quorum was present.

Pledge of Allegiance was recited.

**PRESENT:** D. Brown, D. Brandt, H. Ginop, K. Paquet, Engineer/Manager Shank and Clerk Stempky

**ABSENT:** C. O'Connor (excused)

**VISITORS:** K. Hahn, B. Hartwig, G. Archambo, F. Cribb, C. Muscott, M. Donovan, J. Wallace, J. Moore, M. Sarrault, G. Bunker, C. Veneros, B. Murdock, P. Murdock and C. Antkoviak.

**MOTION by K. Paquet seconded by H. Ginop to approve minutes of last regular meeting of 06/15/2017 as mailed. 4 Yeas 1 Absent (O'Connor) CARRIED**

**MOTION by D. Brandt seconded by K. Paquet to approve for payment current payroll vouchers #17-25-\$71,508.00 and #17-26-\$72,457.82 and accounts payable voucher #17-27-\$471,593.94. 4 Yeas 1 Absent (O'Connor) CARRIED**

**MOTION by K. Paquet seconded by D. Brandt to approve agenda as presented. 4 Yeas 1 Absent (O'Connor) CARRIED**

C. Muscott-Crews that are patching doing an excellent job. Does not feel Road Commission should be paying for the reverse angle parking fix costs and feels should bill the Tuscarora DDA.

M. Donovan commented has not received a response from the Board regarding Supervisory Retiree health care. Chairman Brown advised him, not talking to them at this time as advised by legal counsel.

Engineer/Manager B. Shank presented Policy #60, Communication Service Provider Facility Access Policy for discussion and approval.

**MOTION by K. Paquet seconded by D. Brandt to approve Policy #60-Communication Service Provider Facility Access Policy as follows:**

**Communication Service Provider Facility Access Policy**

**WHEREAS, the Board of County Road Commissioners for the County of Cheboygan (the "Board" or "Road Commission") is a body corporate with the statutory mandate created by MCL 224.9 to formulate policy and to perform those official duties imposed by law; and**

**WHEREAS, real property interests, including easements, various fees, and the right to regulate related to the use of public right-of-ways within the county road system – have been vested in the Road Commission to be held in trust for the benefit of the public; and**

**WHEREAS, the Road Commission has the authority to control and manage the use of the Rights-of-Way that comprise the county road system; and**

**WHEREAS, the Road Commission intends to discharge its obligations regarding real property interests vested in the Road Commission in a manner that benefits and protects the public; and**

**WHEREAS, Article 7, Section 29 of the Michigan Constitution of 1963 reserves to the county road commissions the reasonable control of their highways, streets, alleys and public places, and specifically prohibits any person, partnership, association or corporation, public or private, from operating a public utility within the highways, streets, alleys and public places of any county without first obtaining the consent of the duly constituted authority of the county road commission; and**

**WHEREAS, MCL 247.184 requires the consent of the Road Commission before any public utility may construct wires, cables or like structures upon, over or under a county right-of-way including any improved highway or bridge; and**

**WHEREAS, MCL 224.19b (1) requires any person, partnership, association, corporation or governmental entity to obtain a permit from the Road Commission (and the applicable township, city or village if required by those entities) before constructing, operating, maintaining or removing any facility or performing any work within a county highway right-of-way; and**

**WHEREAS, MCL 224.19b (2) empowers a county road commission to adopt reasonable permit requirements and a schedule of fees sufficient to cover the necessary and actual costs applied in a reasonable manner for the issuance of the permit and for review of the proposed activity, inspection and related expenses; and**

**WHEREAS, MCL 691.1402 charges a county road commission with maintaining highways under its jurisdiction in reasonable repair so that they are reasonably safe and convenient for public travel; and**

**WHEREAS, the Road Commission has made significant investments of time and resources in the acquisition, construction, repair and maintenance of public right-of-ways under its jurisdiction, for the principal purpose of making such rights-of-way safe and convenient for public travel, and such investment has enhanced the utility and value of those public ways; and**

**WHEREAS, the public right-of-ways under the Road Commission's jurisdiction are used by and useful to private enterprises including the Applicant and others engages in providing Communication Services to citizens, institutions and businesses that are served by the county road system; and**

**WHEREAS, the right to access and/or occupy portions of such public right-of-ways for limited times, for the business of providing communication services, is a valuable economic privilege; and**

**WHEREAS, beneficial completion between providers of communication services can be furthered by the Road Commission's consent to locate within and for rights to use public right-of-ways on non-discriminatory and competitively neutral terms and conditions; and**

**WHEREAS, entities engaged in providing Communication Services and entities that own and maintain Facilities for use by Providers desiring to install Facilities related to and/or for providing Communication Services'; and**

**WHEREAS, the Road Commission pursuant to its constitutional and statutory authority to manage and control its Right-of-way may allow use of space within its rights-of-way, and is willing to consider requests allowing installation of Facilities in its right-of-way under a Permit defining the terms to such use consistent with this policy and the general policies of the Road Commission:**

#### **SECTION 1: Purpose**

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**The purposes of this policy are to balance the interests of protecting the public from harm with the interests of the public and applicants in the expansion of communication services via the preceding and following statements of interest:**

- A. Establish the requirements for authorization of reasonable non-exclusive access to locations within the county right-of-way by Providers for the installation of Facilities on a competitively neutral basis, ensure that access will not interfere the Road Commission's ability to fulfill its present and future needs for right-of-way use of as determined by the Road Commission, in its discretion, consistent with its statutory mandate to maintain roads under its jurisdiction so that they are safe for public travel.**
- B. Assist in facilitating the expansion of Services which benefit the public without interfering with the Road Commission's obligations and duties or jeopardizing its interests in right-of-way under its ownership and control.**
- C. Ensure that the Road Commission retains the authority and ability to act to protect the public health, safety and welfare of the traveling public and that constitutionally dedicated transportation funds are not used directly or indirectly to support Facilities or Services in violation of the Michigan Constitution.**
- D. Establish clear and nondiscriminatory guidelines and standards for right-of-way use by Providers for the installation of Facilities.**
- E. Conserve the limited physical capacity of the right-of-way owned or controlled by the Road Commission.**
- F. Assure that the Road Commission's current and ongoing costs of granting and monitoring access to and use of its right-of-way for the purposes that may be allowed under this Policy are fully paid by the persons seeking such access and which result in the Road Commission incurring such costs.**
- G. Secure fair and reasonable compensation to the Road Commission and the residents of Cheboygan County, in a nondiscriminatory manner, for permitting private use of public right-of-ways.**
- H. Preventing proliferation of above ground facilities.**

- I. Assure that all persons or entities providing communication services within public right-of-ways in the county highway system comply with all state, federal and local laws.
- J. Enable the Road Commission to manage its obligations to the public consistent with federal and state law.
- K. Reserve to the Road Commission and provide for the fullest exercise possible of its authority and discretion to require that:
  - a. Communication Service Provider Facilities are installed and maintained within public right-of-ways under the jurisdiction of the Road Commission in such manner and at such points so as not to inconvenience the public use of the public right-of-ways or to adversely affect the public safety and welfare.
  - b. All nonpublic users of the right-of-ways under the jurisdiction of the Road Commission shall be required to defend, reimburse, indemnify and hold harmless the Road Commission for the actual costs incurred by the Road Commission by reason of the construction or presence in the public rights-of-way of facilities of such users. Further, that insurance and security fees be secured to assure that such defense, reimbursement and indemnity is available.

## SECTION 2: Definition of Terms

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- A. For the purposes of this Policy, the following terms, phrases, words, and their derivations shall have the meaning given in this section. Unless otherwise expressly stated, words not defined in this title shall be construed with Title 47 of the United States Code and Chapter 484 of the Michigan Compiled Laws, References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of the law are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interoperated broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereafter enacted or amended.
- B. "Applicant" means any person applying for a right-of-way permit who is a "Communication Service Provider."
- C. "Communication Service Provider" or "Provider" as used herein includes a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of Part I of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or any wireless broadband service, wireless voice service, wireless video service, and/or wireless data service provided to the public or other end user and any Communication Service provided by any wireless, 2-way communication device. Communication Service Provider does not include a utility when providing Communication Services. An owner of Communications Facilities that does not provide Communication Services who leases the Facilities to Provider or affiliate of a Provider for a Provider's use in providing Communication Services is a Communication Service Provider for the purpose of this policy. A person that operates under a written agreement with a Provider to provide communication services over a facility or to install facilities shall be treated as a Provider for purposes of this policy. A copy of all such agreement(s) shall be furnished upon application for authorization to install Facilities under this Policy.
- D. "Communication Services" means federally licensed commercial mobile service as defined in section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat.

- 1064, 47 USC 332; and further defined as commercial mobile radio service in 47 CFR 20.3 or any wireless broadband service, wireless voice service, wireless video service, and/or wireless data service provided to the public or other end users, and Communication Services provided by any wireless device or 2 way communication device.
- E. **"Communication Service Facilities" or "Facilities"** means wireless-related infrastructure as required by Communication Service Providers to provide Communication Services including the equipment or personal property, antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 USC 332; and further defined as commercial mobile radio service in 47 CFR 20.3 or any wireless broadband service, wireless voice service, wireless video service, and/or wireless data service provided to the public or other end users, and Communication Services provided by any wireless device or 2 way communication device.
- F. **"Person"** means an individual, partnership, cooperative, association, private corporation, utility, personal representative, receiver, trustee, assignee, governmental entity or other legal entity.
- G. **"Right-of-Way", "Public Right-of-Way", "Rights-of Way", "ROW" and "Public Rights-of-Way"** means the area on, below or above any land acquired or dedicated for public roads, highways, streets, alleys, easements, or waterways, owned and/or controlled by the Road Commission over which the Road Commission has jurisdiction and the ability to grant the rights set forth herein. Right-of-way does not include a federal, state or private right-of-way.
- H. **"Right-of-Way Permit" or "Permit"** as used herein means the County Road Commission's legal authorization, terminable as defined in the permit, to construct a Facility, maintain or repair a Facility at a specific and limited portion of the ROW or perform other work related to a Facility within the ROW, per all the terms and conditions in or attached to the permit. The term **"Right-of-Way Permit" or "Permit"** shall not mean or include:
- a. Any other permit, authorization, agreement or franchise required for the privilege of transacting and carrying on a business within the applicable city, village or township required by state or local law.
  - b. Any other permit, authorization or agreement required allowing operations on public streets or property.
  - c. Any other permits, authorization or agreements required for occupying any public or private property to which access is not specifically granted by the Permit, including, but not limited to, Permits for placing devices on or in public poles, conduits, other structures, or on railroad easements owned by any public or private entity.

### **SECTION 3: General Provisions**

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The Road Commission supports efforts to establish an open, competitive marketplace for communication services that also serves the Road Commission's statutory mandate to promote safety and convenience in the use of public right-of-ways under its jurisdiction. The Road Commission promotes and encourages competition for communication services to make the latest and best technology available and keep service prices affordable for all county residents and businesses. An integral component of this open marketplace is the consistent application of

regulations to all communications providers and the preservation of local authority over matters of local impact

The Road Commission recognizes that to balance the needs and interests of the public in the management of the right-of-ways together with the desire of the communications service industry to access such rights-of-way, facilities supporting communication services may be integrated into the right-of-ways in conformity principally with community standards, also taking in account industry standards and best practices. Guidelines identifying community standards together with an understanding of industry standards and best practices may be incorporated into the terms and conditions of the Road Commission's right-of-way permit process and may change from time to time, in the Road Commission's sole judgment and discretion.

- A. A Communication Service Provider must submit a complete written right-of-way permit application on a form prescribed by the Road Commission, along with all requested supporting documentation. A permit must be submitted for each distinct location where Facilities are proposed to be constructed, installed or placed. All permit fees and security fees must be submitted with the permit application.
- B. If a right-of-way permit is granted, a Communication Service Provider must agree to abide by the terms and conditions imposed by the permit and any permit special terms and conditions.
- C. A Provider shall not install, construct, or otherwise place Facilities within Road Commission right-of-way, without having a permit issued by the Road Commission.
- D. The Road Commission will require a provider to obtain an annual ROW Permit for maintenance of its Facilities, for ongoing inspection and associated costs, and for any other costs associated with ROW costs. The fact that a specific Facility may be used for multiple purposes does not obviate the need to obtain a Permit authorizing construction or alteration of any existing Facility, unless applicable federal or state law prohibits the Road Commission from requiring such additional permit.
- E. All applications shall be subject to collocation on existing structures where possible and practical. Mandatory future collocation of all subsequent Facilities shall be required where possible and practical for any newly authorized structure under this policy.
- F. Any application that is not for a collocated facility must identify publicly and privately owned sites, support structures, alternative structures identified as alternates to the proposed location and structural information, technical information including a collocation study, other relevant information including written denials of collocation requests from unrelated third parties that demonstrate collocation is not possible or practical.
- G. Requests to access Road Commission ROW for the installation of Facilities must be made by written application accompanied by the items specified in this Policy and include a statement executed by an authorized agent indicating that the Provider agrees to be bound by the terms and conditions of all Right-of-Way Permits required by the Road Commission and any special terms and conditions of the permit.
- H. New structures shall be limited to 45 feet in height, unless otherwise demonstrated to be needed by the Applicant based upon the technical characteristics of the area or other considerations, including collocation. The dimensions of new facilities will generally not be permitted to exceed existing infrastructure in the same vicinity.
- I. No new Facility support structure may be erected in the public ROW within 500 feet of an existing Facility support structure, unless shown, as determined by the Road Commission in its

discretion, that it is required for technical feasibility or that all existing infrastructure is already exhausted or not available for use.

- J. A ROW Permit shall not be deemed to create or convey equitable or legal title to any ROW. The occupancy granted is only permission to occupy those portions of the ROW to which the Road Commission has the right to grant access, for the purposes and time stated in the Permit, and the occupancy granted may not be subdivided or subleased. A ROW Permit shall not grant a vested right for any Facilities to be located or to remain at any specific location in the right-of-way. Any right, permission or consent to occupy any location in the ROW shall be revocable and terminable at the discretion of the Road Commission and the Facility therein removed at the sole cost of the Provider in order to allow free and unencumbered use of the ROW for public work or other public purpose as may be in the public interest as determined by the Road Commission.
- K. A Provider shall immediately (subject to seasonal work restrictions) restore, at its sole expense, in a manner approved by the Road Commission, any ROW portion that is in any way disturbed, damaged or injured by the construction, installation, operation, maintenance or removal of the Facilities, to a reasonably equivalent or better condition as that which existed prior to the disturbance. If Provider, or its contractors or subcontractors, fail to make such repair within a reasonable time, the Road Commission may make the repair and the Provider shall pay the costs the Road Commission incurs for such repair.
- L. No reference herein, or in any Right-of-Way Permit, shall be deemed to be a representation or guarantee by the Road Commission that its interest of other right to control the use of such property is sufficient to authorize its use for such purposes, and a Permit shall be deemed to grant no more than those rights which the Road Commission may have the undisputed right and power to give.
- M. Before the Road Commission issues a Right-of-Way Permit, a Provider must demonstrate that it has obtained the necessary permits and/or consent of all units of state, local or federal government vested by law with the authority to require and grant permits and/or consent.
- N. The Road Commission may deny authorization for location of a Facility if it determines, in its discretion, that there is insufficient room for a facility within the right-of-way.
- O. The Road Commission will manage Provider access to ROW in a nondiscriminatory, competitively neutral and nonexclusive way to the extent required under applicable law and to receive fair compensation. The public interest will be protected by collecting associated fees and administrative costs for the use of Rights-of-Way under the jurisdiction of the Road Commission.
- P. In order to effectively manage and regulate the use of the ROW in the best interests of the public, it is necessary for the Road Commission to reserve and exercise all proprietary, Legislative, administrative and discretionary authority it may have to the full extent allowed or not prohibited by law and nothing in this policy shall be construed to diminish or in any way to limit the proprietary, discretionary, administrative or legislative authority of the Road Commission, its officials, officers and employees as respects the management and use of ROW or in respect to the granting, delaying or denying Provider access within ROW.
- Q. The Road Commission specifically reserves the right to alter, amend or adjust these policies as necessary to address public safety or convenience and on a per application basis.

**SECTION 4: Location Placement Priority**

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- A. The Road Commission’s primary goal is to make and maintain ROW so that they are safe and convenient for public travel. To further this goal, the Road Commission indicates the following location placement priority, which will be applied wherever possible in the Road Commission’s discretion:**
  - 1. Colocation on an existing facility outside the right-of-way.**
  - 2. Colocation on an existing facility within the right-of-way.**
  - 3. Locating a new Facility outside the right-of-way.**
  - 4. Locating a new Facility within the right-of-way.**
  - 5. Collocation on an existing Facility within the ROW shall be preferred to locating a new Facility within the ROW.**
  - 6. Locating a new Facility in the ROW shall only be allowed when the applicant demonstrates, to the satisfaction of the Road Commission, that locating a new Facility outside of the ROW, or collocation on an existing facility, is not possible or practical.**

**SECTION 5: Taxes and Fees**

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- A. To the full extent allowed by law, recovery of all Road Commission costs related to the issuance of a Right-of-Way Permit allowing installation and maintenance of Facilities in the Right-of-Way shall be charged to the Provider. Any such fees shall be approved by the Road Commission, and shall be in an amount sufficient to cover the administrative expenses incurred by the Road Commission that are related to receiving, reviewing and approving a Right-of-Way permit; consulting with any experts deemed necessary by the Road Commission to evaluate requests for access to ROW including all supporting documentation and required studies; evaluating the application; monitoring and inspecting the actual construction of the permitted Facilities; and/or implementing the requirements of this Policy and the terms and conditions of the Permit.**
- B. Permittees shall pay all taxes including but not limited to real estate, personal property, sales, use, income or excise taxes, if any, attributable to installation and maintenance of Facilities within any right-of-way.**
- C. The Provider shall provide the security fee to ensure compliance with its obligations to remove Facilities and restore the adjacent right-of-way upon termination of any Permit.**

**4 Yeas 1 Absent (O’Connor)**

**CARRIED**

Letter of Resignation received from Thomas Weber, HTD, effective July 6, 2017.

**MOTION by D. Brandt seconded by H. Ginop to accept Letter of Resignation from Thomas Weber, wish him well, effective July 6, 2017. 4 Yeas 1 Absent( O’Connor)**

**CARRIED**

Engineer/Manager Shank requesting to hire a HTD to replace the vacant position.

**MOTION by D. Brandt seconded by K. Paquet to authorize Management to advertise and hire one Full Time Heavy Truck Driver Position that has been vacated. 4 Yeas 1 Absent (O’Connor)**

**CARRIED**

Engineer/Manager and Foremen have met to discuss equipment needs, netted approximately \$40,000 from the auction sale and would like to purchase a Tractor with a flail or sickle bar mower and one Pickup. Recently took a pickup out of service, needs over \$2,000 in repairs and 300,000 plus miles on it.

**MOTION by K. Paquet seconded by H. Ginop to authorize Management to advertise for purchase of one Tractor with mower and one pickup. 4 Yeas 1 Absent (O'Connor) CARRIED**

MERS Seminar being held September 21-22, 2017. Approval to send Clerk Stempky and one union employee.

**MOTION by H. Ginop seconded by D. Brandt to authorize Clerk D. Stempky to attend as well as one union employee the MERS Seminar, September 21-22, 2017. 4 Yeas 1 Absent (O'Connor) CARRIED**

**MOTION by K. Paquet seconded by H. Ginop to authorize Clerk D. Stempky as the Officer Delegate for the MERS Annual Conference, September 21-22, 2017. 4 Yeas 1 Absent (O'Connor) CARRIED**

**MOTION by D. Brandt seconded by H. Ginop to authorize B. Shank and K. Paquet to attend the NMARC/ASMCRA, 5<sup>th</sup> Annual Joint Conference, September 13 -15, 2017. 4 Yeas 1 Absent (O'Connor) CARRIED**

**MOTION by K. Paquet seconded by H. Ginop to authorize two employees to attend the Association of County Road Superintendents of Michigan Seminar, October 4-6, 2017. 4 Yeas 1 Absent (O'Connor) CARRIED**

**MOTION by D. Brandt seconded by Ginop to receive and file the following correspondence: Township Meeting Minutes: Mackinaw 6/20/17, Grant 5/9/17 Koehler 5/8/17 and CRASIF call for Board of Trustee Candidates. 4 Yeas 1 Absent (O'Connor) CARRIED**

**Engineer/Manager Shank Update:**

- Canton Road/West Black Lane has started with some tree clearing and culvert work
- Mullett Burt Road started with excavation work
- E. Mullett Lake Road scheduled for start date of July 10
- Stoney Creek Road proposed start mid July
- Shire Road schedule for August
- Old Mackinaw Road paving that was completed last year has some edge cracking, after investigating more they have found an area of clay, feel need to cut out and repave that area at an approximate cost of \$10,000.

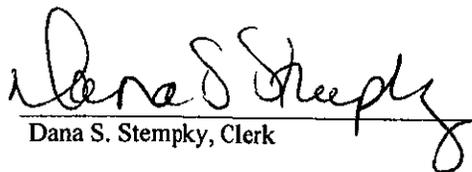
**Foremen Update:**

- Greg-Mowing started, has one Township left to brine today, getting Rondo Road ready to sealcoat, patching and will be helping Tower next week in replacing the first culvert job coming up.

Chairman Brown adjourned regular meeting of the Road Commission at 8:37 A. M. being no further business to come before the Board.



David D. Brown, Chairman



Dana S. Stempky, Clerk