

MEETING NOTICE

A SPECIAL MEETING

Of The

TRAVERSE CITY LIGHT AND POWER BOARD

Will Be Held On

FRIDAY, July 27, 2012

At

4:00 p.m.

In The

COMMISSION CHAMBERS
(2nd Floor Governmental Center)
400 Boardman Avenue

Traverse City Light and Power will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting/hearing upon notice to Traverse City Light and Power. Individuals with disabilities requiring auxiliary aids or services should contact the Light and Power Department by writing or calling the following.

AGENDA

Roll Call

1. Consideration of the Brewery Creek Condominium Association judgment lien and the purchase of properties by Elmwood Township. (Rice)
2. Public Comment

Traverse City Light and Power
1131 Hastings Street
Traverse City, MI 49686
(231) 922-4942

Posting Date: 7-26-12
4:00 p.m.

Ronald W. Sondee
John P. Racine, Jr.
W. Peter Doren
John A. MacNeal
Maurice A. Borden

310 West Front Street
Suite 300
Traverse City, Michigan 49684
Telephone (231) 947-0400
Fax (231) 947-0748
www.sondeeracine.com

July 26, 2012

*Privileged & Confidential
Attorney-Client Communication*

Patrick McGuire, Chairman
308 N. Elmwood Avenue
Traverse City, MI 49684

John Taylor, Vice Chairperson
307 W. Twelfth Street
Traverse City, MI 49684

Michael Coco
325 Wellington Street
Traverse City, MI 49686

John Snodgrass
210 E. Ninth Street
Traverse City, MI 49684

Robert Spence, III
307 W. Eleventh Street
Traverse City, MI 49684

Barbara Budros, City Commissioner
718 Bloomfield Road
Traverse City, MI 49686

Jim Carruthers, City Commissioner
218 West Eleventh Street
Traverse City, MI 49684

R. Ben Bifoss, City Manager
400 Boardman Avenue
Traverse City, MI 49684

Re: Brewery Creek Judgment Lien

Dear Chairman and Board Members:

The Traverse City Light and Power Department has been requested to remove its Judgment Lien against Brewery Creek Condominium Association in connection with the purchase of certain units and other property at the Brewery Creek Condominium site by Elmwood Township. I have not recommended that this lien be removed primarily because it may be necessary to enforce that lien if the Sixth Circuit Court of Appeals rules against the Traverse City Light and Power Department regarding the enforcement of delinquent utility bills through the tax collection procedure. As you know, we have been paid in full for the entire deficiency primarily as a result of the Leelanau County Delinquent Tax Revolving Fund.

Board Members
July 26, 2012
Page 2

Elmwood Township is engaged in a substantial public improvement in the Greilickville area. Because the Judgment Lien presents an obstacle to that development, and because the Judgment Lien may never need to be enforced, Chairman Pat McGuire, Executive Director Ed Rice, Board Member Barbara Budros, and myself met with representatives of Elmwood Township and others in a meeting convened by Mayor Estes. The purpose of the meeting was to see if there was an alternative or compromise which would allow the Greilickville improvements to occur but still provide some security for TCL&P.

The result of that meeting and our recommendation to you is to share the risk with the Township and cap the Township's exposure should the Judgment Lien need to be enforced. The total amount of the original delinquency was roughly \$250,000. The proposed compromise is to reduce that in half so that if the lien needed to be enforced against property the Township was purchasing, the greatest exposure it would have would be \$125,000. The Township would have three years to pay the amount and sell excess property as the source of such payments.

Attached is the proposed Agreement.

If you approve of this compromise, the following motion would be appropriate:

MOVED BY _____, SECONDED BY _____, TO
APPROVE THE AGREEMENT REGARDING JUDGMENT LIEN WITH
ELMWOOD TOWNSHIP AND TO AUTHORIZE THE CHAIRMAN AND
SECRETARY TO EXECUTE THAT AGREEMENT UPON APPROVAL AS TO
FORM BY GENERAL COUNSEL.

Sincerely,

SONDEE, RACINE & DOREN, PLC



W. Peter Doren

WPD:tls

Enclosure

c w/encls (via email):

Edward Rice, Executive Director

James Young, Elmwood Township Attorney

Agreement Regarding Judgment Lien

On the ____ day of _____, 2012, the Charter Township of Elmwood ("Township") and the Traverse City Light and Power Department ("TCL&P"), hereby agree as follows:

If a final decision and order is entered in the case entitled *Brown Bark I, L.P. v Traverse City Light and Power Department*, 6th C.A. #10-2644, which invalidates the treatment of the Brewery Creek public utility charges deficiency as taxes and TCL&P seeks to enforce the Judgment Lien on Real Property recorded at 01 1022/868-869, Leelanau County Register of Deeds, the parties agree as follows:

1. Judgment Lien Reduction. The amount of the Judgment Lien applicable to all lands and units within Brewery Creek, which the Township obtains, shall be \$125,000.00.

2. Judgment Lien Payment. If the \$125,000.00 must be paid to TCL&P, TCL&P understands that the Township desires to make such payment from the sale of Brewery Creek property that is owned by the Township and which is not needed for marina-related purposes. Such sales cannot be conducted immediately. Accordingly, if the Deficiency must be paid, the Township shall have three (3) years from the date of entry of the final order or decision in the federal court case described above in which to pay TCL&P the sum of \$125,000.00. This amount shall be paid even if the unneeded lands have not been sold by the end of this three (3) year period.

3. Payment of Delinquent Charges. All delinquent and current property taxes and utility liens on the land to be purchased by the Township shall be paid in full at closing when the Township purchases land from Brown Bark I, L.P.

In witness whereof the parties hereto have executed this Agreement on the date and year first above written.

Charter Township of Elmwood

Traverse City Light and Power Board

By:
It's: Supervisor

By: Patrick McGuire
It's: Chairman

By:
It's: Clerk

By: Edward E. Rice
It's: Secretary