

East Bay Charter Township  
Light & Power Franchise Request

# 3

(See Item #4 of the approved October 13, 2008 minutes included)

Traverse City Light & Power would like the board to approve their Franchise request to extend service provided to the East Bay Township area

Motion by: \_\_\_\_\_ second by: \_\_\_\_\_

To

Accept

Deny

Table

\_\_\_\_\_  
\_\_\_\_\_

Yeas: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstain: \_\_\_\_\_

Absent: \_\_\_\_\_

Motion

Passed

Failed

SONDEE  
RACINE & DOREN PLC  
ATTORNEYS

RONALD W. SONDEE  
JOHN P. RACINE, JR.  
W. PETER DOREN  
ALAN J. COUTURE  
JOHN A. MACNEAL  
MAURICE A. BORDEN  
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TRAVERSE CITY, MICHIGAN 49684  
TEL (231) 947-0400  
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440 W. MAIN STREET, SUITE A  
GAYLORD, MICHIGAN 49735  
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January 23, 2009

*Via Email & First Class Mail*

James Young, Esq.  
Young, Graham, Elsenheimer & Wendling, P.C.  
P.O. Box 398  
Bellaire, MI 49615  
[jyoung@upnorthlaw.com](mailto:jyoung@upnorthlaw.com)

Dear Jim:

Re: TCL&P Franchise

I am writing to you in your capacity as East Bay Township Attorney. My client, the Traverse City Light & Power Department, in October requested an amendment to their revocable 30 year franchise to allow TCL&P to serve additional area. They have been directed to you by East Bay Township Clerk, Susanne Courtade.

Enclosed is a copy of their request submitted to the Township Board in October and the current franchise ordinance. I do not think there is a problem with this request, but it has not yet been acted on, perhaps because of the press of other business. However, we hope that you can help clarify this so that we can return to the Township Board in February.

Our request was to extend the franchise into certain sections, but we would also like to discuss extending it throughout the entire Township.

My client believes it has been a good corporate citizen of the Township and has provided a very valuable low-cost, essential service to the residences and businesses in the Township. It would like to be the service provider for other Township homeowners and businesses throughout the Township if the customer chose TCL&P from the available suppliers.

James Young, Esq.  
January 23, 2009  
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I will be calling you next week to see if this request can be put on the schedule of an upcoming Board meeting.

Sincerely,

SONDEE, RACINE & DOREN, PLC



W. Peter Doren

WPD:tls

Enclosure

c: Susanne Courtade  
Jim Cooper



TRAVERSE CITY  
LIGHT & POWER

Investing Our Energy In You

October 2, 2008

Sue Courtade, Township Clerk  
East Bay Township Hall  
1965 North Three Mile Rd.  
Traverse City, MI 49686

VIA EMAIL

Dear Sue:

Traverse City Light and Power (TCL&P) has had numerous requests for electric service to new developments in East Bay Township. TCL&P's existing township franchise (Attachment A) does not cover the new developments.

TCL&P would like to add additional sections in order to serve both current and future customer requests for electric service (Attachment B). Please place this request on the township board agenda for October 13, 2008.

Attachment B also includes possible wording for the franchise amendment.

Please contact me if you have any questions on this matter. I will also be in attendance at the next board meeting.

Sincerely,

Jim Cooper  
Key Accounts and Marketing Manager  
932-4560

Attachments: A,B

Ordinance No. \_\_\_\_\_

EAST BAY TOWNSHIP  
Ordinance Amendment - Franchise to  
Traverse City Light & Power

TITLE: An Ordinance to extend the franchise area of Traverse City Light and Power Department

THE TOWNSHIP OF EAST BAY ORDAINS:

That Ordinance No. 91-F, adopted February 28, 1991, entitled

“An Ordinance to Grant a Non-Exclusive Franchise to Traverse City Light and Power Board, to transact local business within the Township of East Bay.”

Ordinance No. 91-F is hereby amended at Section 2 to read in its entirety as follows:

2. Franchise Area. All of Section 16, 17, and 18 in the southern part and that portion of the following sections that are in East Bay Township: Sections 7, 8, 9, and 17 in the northern part.

And also including all of Sections 16, 18, 19, 20, 21, 28, 29, and 30 in the northern and central parts of the Township.

All other provisions of Ordinance No. 91-F are to remain the same.

This amendatory Ordinance shall take effect upon the day after the date of publication.

This Ordinance Amendment is hereby declared to have been adopted by the Township Board of East Bay at a meeting thereof duly called and held on the \_\_\_\_ day of \_\_\_\_\_, 2008, and ordered to be given publication in a manner prescribed by law.

A copy of this Ordinance Amendment may be purchased or inspected at the East Bay Township Offices located at 1965 N. Three Mile Road, Traverse City, Michigan.

This Ordinance has been recorded with the Grand Traverse County Clerk on \_\_\_\_\_, 2008.

\_\_\_\_\_  
Linda Coburn, Clerk

ORDINANCE NO. 91-F

EAST BAY TOWNSHIP  
ORDINANCE GRANTING FRANCHISE TO  
TRAVERSE CITY LIGHT AND POWER TO  
TRANSACT LOCAL BUSINESS FOR A PERIOD OF 30 YEARS

An Ordinance to grant a non-exclusive franchise to Traverse City Light and Power Board, to transact local business within the Township of East Bay.

THE TOWNSHIP OF EAST BAY ORDAINS:

There is hereby adopted an Ordinance granting to the Traverse City Light and Power Board, its successors and assigns, a Michigan municipal electric utility, a non-exclusive franchise to transact local business within the Township of East Bay, pursuant to the following terms of the franchise:

1. Grant of Franchise. The Township of East Bay, State of Michigan, hereinafter referred to as Township, hereby grants to Traverse City Light and Power Board, hereinafter referred to as Grantee, a franchise to construct, repair, maintain, and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers, underground wires and equipment, and other electrical appliances, for the purposes of transmitting, transforming and distributing electricity on, under, along and across the highways, streets, alleys, bridges, and other public places, and to transact local utility business in that area of the Township of East Bay, Grand Traverse County, Michigan, described in paragraph 2 hereof. In consideration of the rights, power and authority hereby granted,

Grantee shall faithfully perform all things required by the terms hereof.

2. Franchise Area. All of Section 16, 17, and 18 in the southern part and that portion of the following sections that are in East Bay Township: Sections 7, 8, 9, and 17, and the Northeast quarter of Section 18 in the northern part.

3. Construction and Maintenance Standards. All of Grantee's towers, masts, and poles shall be neat and sightly, and so placed on either side of the highways, streets, alleys, and bridges as not to unnecessarily interfere with the use thereof for highway, street, and alley purposes. All of Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways, streets, and alleys. All work performed by said Grantee in said highways, streets, alleys, bridges, and other public places shall be done so as not to interfere with the use thereof, and when completed, the same shall be left in as good condition as when work was commenced. The Grantee shall have the right to excavate and to trim trees if necessary in the conduct of such business, subject, however, to the supervision of the highway authorities.

4. Hold Harmless. The Grantee shall at all times keep and save the Township free and harmless from all loss, costs, and expense to which it may be subject by reason of the negligent construction and maintenance of the structures hereby authorized. In case any action is commenced against the Township on account of the permission herein granted, said Grantee shall, upon notice, defend the Township and save it free and harmless from all loss,

cost, and damage of any nature, including reasonable attorney fees, arising out of such negligent construction and maintenance.

5. Non-Exclusive Rights. The rights, power, and authority herein granted are not exclusive.

6. Revocation. The franchise granted by this ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

7. Additional Conditions. In addition to other conditions contained herein, the foregoing grant shall be subject to the following conditions:

A. Before commencing the construction of any electric transmission line or changing the route thereof, the Grantee shall notify the County Road Commission of the proposed construction and obtain approval from the County Road Commission and, if the County Road Commission should so require, file with it plans and specifications of the proposed construction.

B. The Grantee shall at all times conform to all ordinances of the Township now in force and as amended or enacted hereinafter.

C. The Grantee shall keep on file at its principal office full and complete plans showing the exact location of all franchise equipment and facilities installed on any public property within the Township. The Grantee shall file with the Township Clerk on or before the first Monday in February of each year a current map or set of maps drawn to scale, showing the location of all franchise equipment and facilities installed in public places of the Township during the previous year, except



that during the first year of the franchise such failing shall include all such equipment previously installed or operated, either prior to or after the effective date of the franchise.

D. The Township may require that the Grantee, before entering upon any public place for the purpose of construction of any pole, line, equipment or facility, file plans and specifications for such proposed pole, line, equipment or facility and shall not undertake such construction until the Town Board shall have approved the plans and specifications, which will not unreasonably be withheld.

E. The Grantee shall raise its wires or otherwise move them for the passage of any structure when so requested by the County Road Commission. Such work by Grantee shall be without charge if it is determined by the County Road Commission to be necessary for a public purpose.

F. Within twelve (12) months after the use of any franchise equipment or facility has been permanently discontinued or after the franchise expires or is otherwise terminated, the Grantee shall remove such property from any public place in the Township and restore such public place so as to conform in all respects with the current condition of such public place at the date of such restoration; provided such property shall not be removed if the Township Supervisor shall determine that such removal shall cause unreasonable damage to such place and the Township Supervisor thereupon requests that any such property shall remain in place then such property shall not be removed and title thereto shall become vested in the Township.

8. Non-Assignment. The Grantee shall not assign the franchise or otherwise transfer it or permit others to use it except on prior written approval by Ordinance enacted by the Town Board.

9. Effective Date. This ordinance shall take effect upon the day after the date of publication thereof, provided it shall cease and be of no effect after thirty (30) days from its adoption, unless within said period the Grantee shall accept the same in writing filed with the Township Clerk. Upon the acceptance and publication hereof, this ordinance shall constitute a contract between said Township and Grantee, subject to each party's right of revocation contained in paragraph 6 above, for a period of thirty (30) years from the date of such acceptance.

JOHN S. PORTER, Supervisor  
FRANCES A. FEHRENBACH, Clerk  
Adopted:  
Prepared in the Law Offices of:  
Running, Wise, Wilson,  
Ford & Phillips  
By: Richard W. Ford  
Township Attorneys  
Business Address:  
326 State Street  
P.O. Box 686  
Traverse City, MI 49685-0686

APPROVED

East Bay Charter Township  
1965 Three Mile Road North  
Traverse City, MI 49686

Regular Board Meeting  
Monday October 13, 2008

**Call Meeting to Order:** Chairman Lile called the meeting to order at 6:30pm.

**Pledge of Allegiance:** was recited by all in attendance.

**Roll Call:** Board Members Present: Glen Lile, Sue Courtade, Craig Goodrich, Tracey Bartlett, Butch Strait, Dale McAllister and Beth Friend

Others Present: Anne Wendling, Recording Secretary; James G. Young, Township Attorney; Jay Kilpatrick, Township Planner

Twenty-two (22) members of the public were in attendance.

**Review for Conflict of Interest:** None

**Correspondence:** Provided in the Board Packets.

**Consent Calendar:**

- A. Board Minutes: September 8, 2008 Regular Board Meeting Minutes were recommended for approval.
- B. General Fund: checks numbered 6112 - 6205 were paid in the amount of \$85,290.29 with voided checks 6135 and 6154.
- C. Ambulance Fund: checks numbered 1873 - 1888 were paid in the amount of \$229,423.63.

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- D. Receiving Fund: Check numbers 1755 - 1756 in the amount of \$34,291.63 were paid.
- E. Payroll Fund: For the payroll dated 8/17/08 through 8/30/08 checks numbered 10853 - 10882, and automatic check deposits numbered 1000003594-3596, 3603-3606, 3608-3609, 3611-3613, 3615, 3617, 3619, and 3623 totaling \$14,973.48.
- For the payroll dated 8/31/08 through 9/13/08 checks numbered 10883 - 10901 and automatic check deposits numbered 1000003627-3628, 3633, 3636, 3638-3639, 3642, 3645, 3647-3650, 3652, 3654, 3656, and 3660 totaling \$14,357.29.
- For the payroll dated 9/14/08 through 9/27/08 checks numbered 10902-10911 and automatic check deposits numbered 1000003666-3667, 3671, 3676-3679, 3681, 3683, and 3685-3686 totaling \$11,724.57.
- Payroll for the three periods totaled \$41,055.34.
- F. Payroll Taxes EFT Funds
- For the payroll of 8/17/08 through 8/30/08 the transfer was \$4,211.48; for the payroll dated 8/31/08 through 9/13/08 the transfer was \$5,361.33. For the payroll of 9/14/08 through 9/27/08 the transfer was \$3,472.94.
- The total payroll amount for the two time periods combined was \$54,101.09.
- Total amount paid: \$403,106.64.
- G. Motion to accept the proposed Board Appointments
- H. Motion to accept the proposed Budget Adjustments.
- I. Motion to accept the proposed Approved Financial Institutions.

*Strait asked to move item G to New Business #14. Friend moved and McAllister supported to approve the consent calendar as amended and the motion carried unanimously.*

**Public Comment:** One person commented regarding the election, the school house property, and the school tax bill. Another person commented on the move of item G and the school house property and the school tax bill.

**Reports:** Supervisor: Lile gave highlights of meeting he attended over the past Month including Resource Recovery, and the Sewer and Water Committee. He also noted that on November 8<sup>th</sup>, there would be an electronic recycling drop off and that the Grand Vision kickoff was on October 7<sup>th</sup>. He also said that on September 11<sup>th</sup>, the Metro Articles of Incorporation were approved. Friend asked about the pending DPW budget and commented that she would like to move public comment before the consent calendar on the agenda.

Clerk: Courtade reported that there are 22 days remaining until the election. Twenty percent of absentee ballots given out have been returned. East Bay Township has increased the number of registered voters in the township. Election workers will be trained this week here at the township. Since being appointed to the LIAA council, Courtade has helped with the LIAA bylaws. Friend asked about the School House project and Lile stated that the owners have been contacted.

Treasurer: Bartlett stated that she has attended Road Commission meetings and has asked for a cost projection for bringing the township roads up to standards. Mary Gillis said she is trying to finish the cost projection. Bartlett also added that a light pole may need to be replaced to make the Swigert's special assessment accurate. She has also added more financial institutions to spread out township monies in light of the banking situation. Bartlett introduced Kym Judge, a contracted accountant. Friend said it would be a great idea if Judge could be present for next year's audit. Bartlett explained that the school tax issue was a bank error, and that the tax bill was not late as some had previously thought and will bring proof in the form of letter to the next meeting.

Trustees: Friend stated that at the last meeting, the Planning Commission approved the Lakes Overlay District zoning amendment and voted to forward it to the Board for final approval. The Master Plan supplement and a proposed change to Ordinance 109 were also discussed. She said that

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the Planning Commission approved a site plan for Pirates Cove to add a zip line and ropes course.

Sheriff Department: Deputy Mike Shea reported that in September 2008 there were a total of 513 calls for service and another neighborhood watch will be up and running soon.

Ambulance Department: Included in packets.

Fire Department: No report at this time.

Engineer: No report at this time.

County Commissioner: Margaret Underwood reported on the Grand Vision project and urged citizens to complete the survey. She also said that the Boardman River Dam meeting will be held on October 28<sup>th</sup> and that the final engineer's report may be ready at that time. She added that the Health Department is giving flu shots as an emergency practice run on October 14<sup>th</sup>. The next Board of Commissioner's meeting will be on Oct 29, 2008 at Green Lake Township and the county budget for next year will be finalized at that meeting.

Township Attorney: Township Attorney Young updated the board on the noise ordinance. He hopes to have the issue on the agenda for next month.

Road Commission: No report at this time.

#### **New Business:**

##### **1. PUBLIC HEARING – Cherry Tree Inn Condo PUD Request**

Paul Fitzsimons presented the Cherry Tree Inn Condo PUD to the board and explained what the PUD included. The proposal includes a Spa/Salon and an outdoor pool. Parking was an issue, but it was solved by contracting with nearby business owners so that employees could park off-site. Signage will be the same size as the existing signage and will comply with zoning requirements. Lile opened the public hearing at 7:26pm. One comment was heard regarding the safety and parking. Lile closed the public hearing at 7:27pm. Goodrich

asked about engineering report and the project. Fitzsimons stated that they have met all requirements in this respect and that engineers have not looked at the pool in terms of engineering. Courtade stated that she is concerned about parking when or if the businesses providing extra parking are not viable anymore and inquired about the Gens Park project and whether it had been completed. Planner Kilpatrick said that this action does not give a land use permit and all engineering and parking issues need to be taken care of before this project can move forward.

*Strait moved that the proposed PUD #SPR 5-08 be approved and that the Planning Commission Findings of Fact dated 8/12/2008, Jay Kilpatrick's report of 7/31/2008 and Jay Kilpatrick's report of 8/18/2008 are adopted as the township board's findings of fact subject to the same conditions contained in the Planning Commission's decision and Findings of Fact of 8/12/2008 except that a) Condition 2 shall require that the parking agreement not only be approved by the township attorney, but also require that the parking agreement remain in effect for as long as there is a need for the off-site parking as determined by the township planner; and b) the applicant shall provide shuttle service to and from all off-site parking. Bartlett seconded the motion and with Courtade dissenting, the motion carried.*

**2. Zoning Ordinance: Text Amendment Pertaining to Camps and Campgrounds**

Kilpatrick reviewed the proposed Zoning Ordinance Amendments. He explained that this amendment will approve the proposed text amendments and the rezoning request. This amendment will allow camps and campgrounds in the zoned natural area, but only as a special land use which still had to be approved by the Planning Commission. He stated that the proposed changes were consistent with the Master Plan and were endorsed by county planners as well. *Courtade made a motion to adopt Ordinance 3-08. Goodrich seconded and the motion passed unanimously.*

**3. Zoning Ordinance: Rezoning Request (RZ 1-08)**

*Courtade moved to approve Zoning Ordinance Amendment ZA 3-08 and that the memo written by Planner Jay Kilpatrick on July 21, 2008 be adopted as the basis for this decision. McAllister seconded the motion and the motion carried unanimously.*

**4. Franchise Request Traverse City Light and Power**

Jim Cooper requested the addition of certain sections on their map for an electric service franchise for Traverse City Light and Power. New poles may be required. Lile inquired if expansion could be underground if possible or if existing

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poles could be shared with other electric companies to reduce the number of poles lining the roads in East Bay Township. Other board members agreed. Bartlett asked about this plan and the proposed expansion of Three Mile Road. Young commented on co - location and underground utilities. Township Attorney Young recommended if the township wanted to consider making sharing of poles and underground utilities a condition of franchising, he suggested tabling the matter and taking look at all other franchises within the township so that all are treated equally. The board members agreed to consider the concept that all lines be located underground unless they are being located in an area where there are already above ground and to co-locate unless unsafe. Township Attorney Young will collect all utility franchises from Courtade and he will review them and propose these changes. Strait inquired about the difference in cost between underground power and above ground lines. Life asked if Cherryland Electric and TCLP had discussed poles and co-location. Board members agreed to work on holding a public hearing on proposed franchise changes for the November meeting.

***Life called a five minute recess at 8:17pm and reconvened the meeting at 8:30pm.***

**5. *Grand Traverse Conservation District – Steve Largent***

Largent gave a presentation and updated the board on ongoing projects of the Boardman Watershed and the Grand Traverse Conservation District. He brought maps, gave a slide show and gave facts on the Boardman Watershed. Projects being worked on include Boardman Dams, 14 Ponds, and lowering Brown Bridge Pond. He also stated that the Boardman River Nature Center is open to the public now.

**6. *Request of Approval Boy Scouts of America Camp Greilick Grant Proposal***

Courtade apprised the board of an opportunity for the Boy Scouts to receive a grant from the Grand Traverse Band of Ottawa and Chippewa Indians. The scouts need the support of the township to apply for the grant. *Strait moved and McAllister supported to direct the clerk to write a resolution and letter of support on behalf of the township. The motion carried unanimously.*

**7. *Waterline – Pat Noland***

Sousa spoke to the board regarding lowering the waterline that was constructed from 5 Mile Road to the Holiday Village Cul-de-sac. A letter dated February 10, 2003 states that the board will pay the cost of ~~watering~~ lowering the waterline.



Goodrich

stated that a definitive cost needed to be assessed for the project so that the township would know what it was paying for. Friend asked about a cost sharing agreement and inquired about the cost obligation of the township. Township Attorney Young suggested obtaining a "not to exceed" figure. Goodrich suggested asking Noland about the cost of the project and inquiring about his future plans and intentions.

**8. Resolution 2008-18 International Fire Code Amendment 2005-5**

*Bartlett moved and Strait seconded to adopt Ordinance 2008-18, the International Fire Code Amendment. The motion carried unanimously.*

**9. Resolution 2008-25 Dates/Times 2009**

Courtade spoke with Chair Macdonald of the Parks Commission regarding the start time for their meetings. With Macdonald's approval, Courtade asked the board to change the Parks Commission meeting times to 6:30pm to be consistent with the starting times of other meetings.

*Strait moved and McAllister seconded to approve Resolution 2008-25 which sets the meeting times and dates for all 2009 meetings. The motion carried unanimously.*

**10. Resolution 2008-24 Solid Waste Authority**

Lile stated that this is a resolution which supports centralized recycling opportunities and that other townships are also in support of this resolution. *Bartlett moved to approve Resolution 2008-24 supporting continued centralized recycling. Goodrich supported the motion and the motion carried unanimously.*

**11. Appointment Fire Authority**

Township Attorney Young said that a temporary board member needs to be appointed to the Emergency Services Authority to meet approval of the state. Strait and Lile will be on the board until January at which time the appointments will be revisited.

*Friend made a motion to accept appointments of Lile and Strait to the Fire Authority Board. Courtade supported the motion and the motion carried unanimously.*

**12. Planner**

Lile said that a proposed job description for a township planner was given to everyone this evening and he asked for any comments from board members. He would like feedback at the next meeting.

**13. East Bay Branch Library Roof Repair**

Lile stated that the flat portion of the roof is leaking at the township library and he obtained bids from several contractors. The bids vary in price quite a bit and some contractors proposed membranes instead of shingles. Lile stated that his personal preference would be shingles.

*Courtade moved to accept the bid from Mariage Roofing Co, Inc. at \$9,872.00 with an extra \$600 for insulation. Goodrich supported the motion and the motion carried unanimously.*

**14. Board Appointment**

Lile recommended the appointment of Tracey Bartlett to the Planning Commission to replace Beth Friend in a memo dated October 1, 2008. Strait mentioned that a new trustee should be on the Planning Commission and Goodrich agreed citing that it was a good learning experience. Goodrich also said that the election is pending and the appointment should wait until after the election. Friend stated that serving on the planning commission was a great experience, but she noted that it does require an interest in Planning and Zoning.

Lile spoke with Nickels and Nickels agreed with Friend. Goodrich stated that he wants to see consistent representation and not an elected official.

*Friend made a motion to approve the appointment of Bartlett to serve on the Planning Commission. Lile supported the motion. With Courtade, Goodrich and Strait dissenting, the motion carried 4-3.*

**Public Comment:** Largent spoke regarding a plant rescue program. Another resident spoke regarding the power company donation status and inquired about the roofing bids. There was also a comment regarding employees being paid for time at meetings; renovation plans for offices and published minutes.

**Adjournment:** Chairman Lile adjourned the meeting at 9:30pm.

APPROVED

Submitted by:

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Anne E. Wendling, Recording Secretary      Date

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Susanne M. Courtade, Clerk      Date

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Glen Lile, Supervisor      Date