



Notice City Commission Study Session

7:00 PM

Monday, April 11, 2016

Governmental Center, Commission Chambers, 400 Boardman Avenue

Traverse City, MI 49684

Posted and Published: April 8, 2016

The meeting informational packet is available for public inspection at the Traverse Area District Library, Law Enforcement Center, City Manager's Office, and City Clerk's Office.

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At the request of City Manager Marty Colburn, City Clerk Benjamin Marentette has called this Study Session.

City Commission:

c/o Benjamin C. Marentette, MMC, City Clerk

(231) 922-4480

Email: tcclerk@traversecitymi.gov

Web: www.traversecitymi.gov

400 Boardman Avenue

Traverse City, MI 49684

The mission of the Traverse City City Commission is to guide the preservation and development of the City's infrastructure, services, and planning based on extensive participation by its citizens coupled with the expertise of the city's staff. The Commission will both lead and serve Traverse City in developing a vision for sustainability and the future that is rooted in the hopes and input of its citizens and organizations, as well as cooperation from surrounding units of government.

Welcome to the Traverse City Study Session!

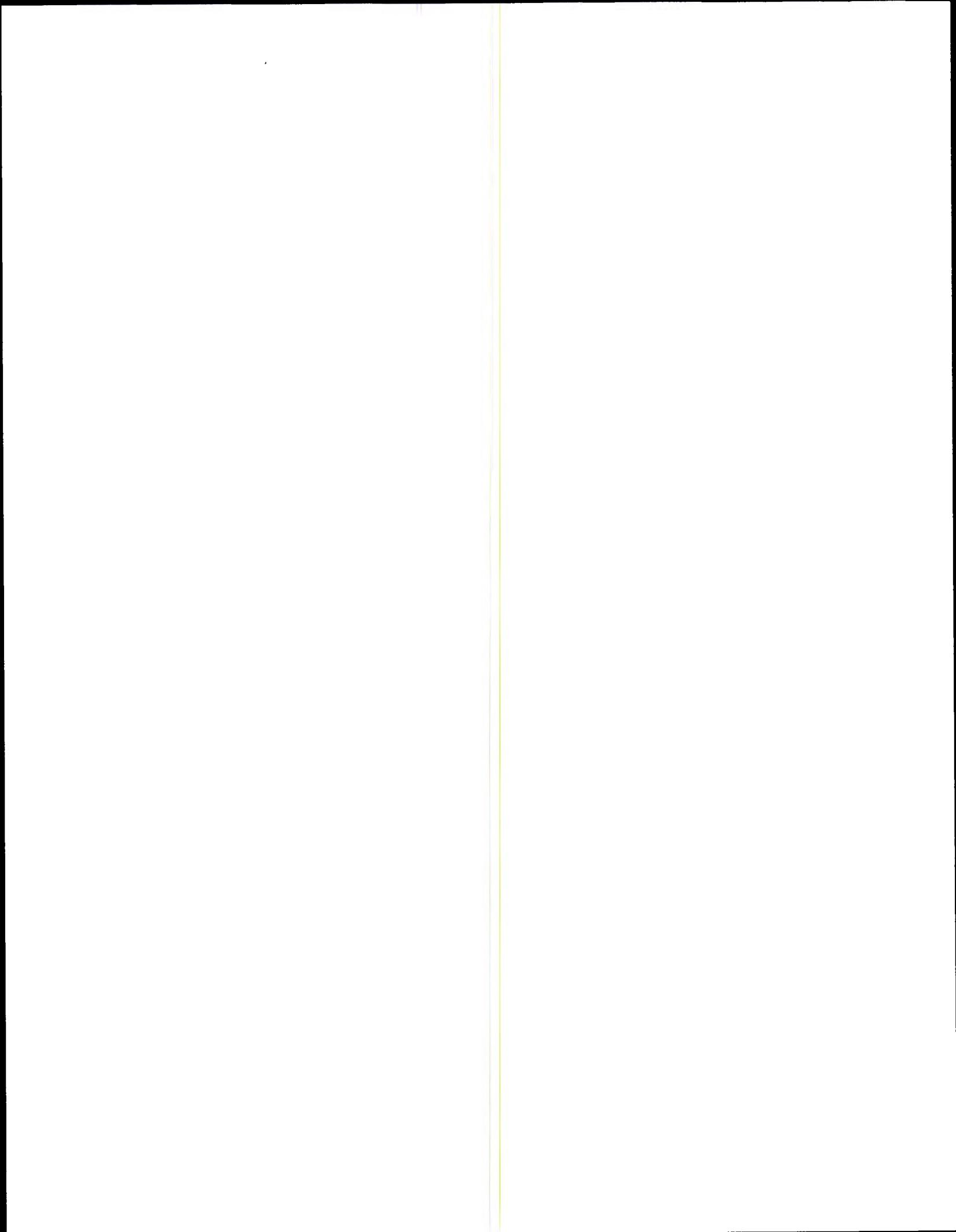
Any interested person or group may address the City Commission on any agenda item when recognized by the presiding officer or upon request of any commissioner. Also, any interested person or group may address the City Commission on any matter of City concern not on the Agenda during the agenda item designated Public comment. The comment of any member of the public or any special interest group may be limited in time. Such limitation shall not be less than five minutes unless otherwise explained by the presiding officer, subject to appeal by the Commission.

Agenda

Pledge of Allegiance

Roll Call

1. Discussion regarding City employee health insurance plans. (Marty Colburn, Kristine Bosley)
2. Discussion regarding City employee retirement programs. (William Twietmeyer)
3. Discussion of Community Outreach and Awareness Regarding the Lead and Copper Implementation Plan. (Marty Colburn)
4. Report from the City Manager. (Marty Colburn)
5. Announcements from the City Clerk. (Benjamin Marenetette)
6. Public comment.
7. Adjournment.





The City of Traverse City

Communication to the City Commission

FOR THE CITY COMMISSION MEETING OF APRIL 11, 2016

DATE: APRIL 8, 2016

FROM: ^{MAC} MARTY COLBURN, CITY MANAGER

SUBJECT: APRIL 11 STUDY SESSION

This memo covers Monday evening's study session.

1. *Discussion regarding City employee health insurance plans.*

Human Resources Director Kristine Bosley will be presenting an overview of the City employee health insurance renewal process. Within your packet you will find a breakdown of the rates proposed by the City's current vendor, Priority Health. You will notice that the plan itself would not change however there would be a 4.33% increase in the premium for the High Deductible Health Plan, a 7.20% increase for the Priority 1 Plan and a 7.11% increase for the Priority Copay Alignment plan.

2. *Discussion regarding City employee retirement programs.*

On Monday evening, City Treasurer/Finance Director Bill Twietmeyer will be in attendance to give an overview of the City's employee retirement programs, including the ACT 345 and MERS systems. His overview will include visuals and mock scenarios to help you better understand the City's current position as it relates to retirement programs.

3. *Discussion of Community Outreach and Awareness Regarding the Lead and Copper Implementation Plan.*

In your packet is information about a lead and copper implementation plan. In light of the incident in Flint, state agencies are asking local jurisdictions to perform community outreach and awareness regarding this plan and encouraging the City to provide information and educational material to its customers.

As noted within the letter provided by Director of Public Services Dave Green, the City is aware of approximately 130 locations where there may be lead gooseneck

connections. To resolve this, the City will be reaching out to these locations in hopes of performing further testing of the water and replacement of the lead gooseneck connections.

4. *Report from the City Manager.*

Honorable Mayor and Commissioners, attached you will find the Judge's Opinion for Case No. 15-31341-AA, regarding the development at Pine Street and Front Street. This is being provided at the request of Mayor Carruthers.

MC/kez

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copy: William Twietmeyer, City Treasurer/Finance Director
Kristine Bosley, Human Resource Director
Art Krueger, Water Plant Supervisor

2016-17 Health Insurance Renewal

General Health Insurance Changes

No Changes in the Plans

Notice to Employee Groups

Notice of the changes in employee group health insurance costs will be sent to the City employee groups, retirees and to Light and Power.

Open Enrollment

The Health Insurance open enrollment period is planned for mid-May to mid-June

High Deductible Health Plan (HDHP) with Health Savings Account (HSA)

4.33% increase in premium. Deductible amounts \$1300/2600.

Priority Health HMO - **High Deductible Health Plan (HDHP)** w/ a Health Savings Account (HSA)

Deductible \$1300 single; \$2600 double/family

CONTRACTS	TYPE	Insurance Rate includes Fees	Total Hlth Cost (Rate + Deductible)	CAP	TOTAL CITY SHARE	HSA City Share	Hlth Prem City Share	EMPLOYEE SHARE
L&P Admin, L&P BU	Single	431.05	539.39	266.00	402.69	108.33	294.36	\$136.69
	Double	1,039.69	1,256.36	470.00	863.18	216.67	646.51	\$393.18
	Family	1,156.09	1,372.76	496.00	934.38	216.67	717.71	\$438.38
<hr/>								
ACT, Fire	Single	431.05	539.39		431.51	108.33	323.18	\$107.88
GME-CT, GME,	Double	1,039.69	1,256.36		1,005.09	216.67	788.42	\$251.27
Sergeants, Captains, Patrol - 80/20	Family	1,156.09	1,372.76		1,098.21	216.67	881.54	\$274.55

Active Employees on Plan (All Groups City, TC L&P, & DDA)

Single: 32

Double: 34

Family: 84

Priority 1 and Priority Copay Alignment

The premium cost for these plans will increase by 7.20% and 7.11% respectively.

Priority Health HMO - **Plan #1** (\$10 office/ \$10 generic/ \$30 brand name prescription drug)

CONTRACTS	TYPE	MEDICAL BENEFIT PLAN COSTS	TOTAL	CAP	CITY SHARE	EMPLOYEE SHARE
L&P Admin, L&P BU	Single	589.83	589.83	266.00	427.92	\$161.92
	Double	1,423.37	1,423.37	470.00	946.69	\$476.69
	Family	1,579.88	1,579.88	496.00	1,037.94	\$541.94
ACT, Fire Patrol, Captains, Sergeants, GME, GME-CT - 80/20	Single	589.83	589.83	N/A	471.87	\$117.97
	Double	1,423.37	1,423.37	N/A	1,138.70	\$284.67
	Family	1,579.88	1,579.88	N/A	1,263.90	\$315.98

Active Employees on Priority 1 Plan (All Groups City, TC L&P, & DDA)

Single: 3

Double: 1

Family: 0

No Active Employees on Co-Pay Alignment Plan



April 12, 2016

City Resident

RE: Community Outreach and Awareness Regarding the Lead and Copper Implementation Plan

Dear Resident,

In light of the Flint Michigan water problems and a growing awareness of potential problems in other parts of the country the Michigan Department of Environmental Quality (MDEQ) as well as the Environmental Protection Agency (EPA) has expressed to all Community Water Suppliers in the State that we reach out to our customers and provide any information and educational materials available to us regarding the Lead and Copper Implementation Plan.

The City currently monitors lead and copper levels in our water, based on EPA recommendations and guidance and have not exceeded any detection limit threshold for either in any of our test locations. While the City is quite sure we don't have any lead water distribution mains or lead service lines in our water supply system, we are aware of approximately 130 locations where we believe there are lead gooseneck connections where the service line joins the distribution main. The EPA is now recommending that we encourage residents with these connections to have their tap water tested to confirm our test results. If you received this letter we suspect you may be one of the 130 locations we feel have a gooseneck connection at the main and/or a galvanized water service into the house. As a way to facilitate this testing and to be proactive on eliminating these connections from the system the City would like to offer up scheduling and paying for the test for you so that we can use the test results to prioritize or rank the order these locations should be replaced. We plan to replace up to 30 locations a year over the next 4 years and these tests will help facilitate the replacement process.

If this sounds agreeable to you please call Justin Roy, Water/Sewer Maintenance Division Superintendent, at 922-4923 to schedule an early morning appointment for the test. Also, please call Justin's office if you know your service has already been replaced or if you don't want to run a test so that we can update our list of locations.

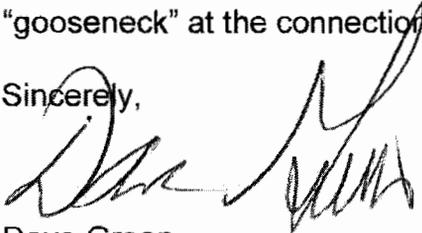


April 12, 2016
Community Outreach Program
Page 2

Please be assured that this letter was not sent out to place worries or concerns on your mind as it relates to the question "is our drinking water safe" so many people are asking. It is more of an informational, proactive way to just make sure we do not have any issues we are not aware of. According to our records, research, and testing, the City of Traverse City's drinking water meets and/or exceeds all the parameters listed by the EPA and the MDEQ requirements and recommendations and is a very safe, economical and convenient water supply.

Enclosed are some informational documents the MDEQ and EPA put together to strengthen the knowledge base of the public as it relates to this topic that you may find helpful. Remember, we do not believe we have any service lines running from the main to the house that are all constructed of lead like so many other communities have. We are only talking about a short section of pipe or "gooseneck" at the connection point.

Sincerely,

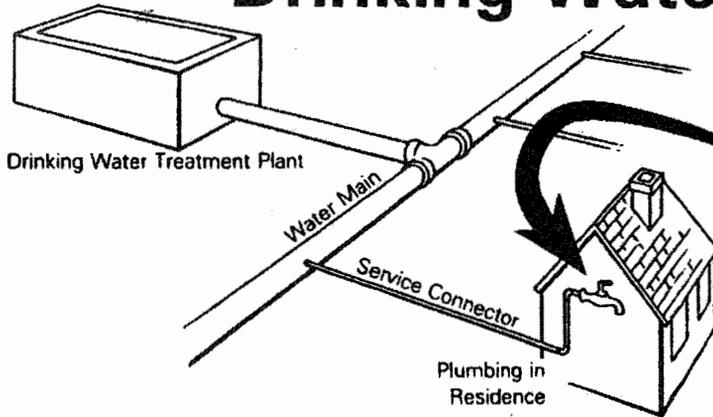


Dave Green
City of Traverse City
Director of Public Services

Cc: Marty Colburn, City Manager
Justin Roy W/S Maintenance Superintendent
Art Krueger, Water Plant Superintendent



LEAD In Your Drinking Water



Health Threats From Lead

Too much lead in the human body can cause serious damage to the brain, kidneys, nervous system, and red blood cells.

You have the greatest risk, even with short-term exposure, if:

- ◆ you are a young child, or
- ◆ you are pregnant.



Sources of Lead in Drinking Water

Lead levels in your drinking water are likely to be highest if:

- ◆ your home has faucets or fittings made of brass which contains some lead, or
- ◆ your home or water system has lead pipes, or
- ◆ your home has copper pipes with lead solder, and
 - the home is less than five years old, or
 - you have naturally soft water, or
 - water often sits in the pipes for several hours.

Actions You Can Take To Reduce Lead In Drinking Water

◆ Flush Your Pipes Before Drinking

Anytime the water in a particular faucet has not been used for six hours or longer, "flush" your cold-water pipes by running the water until it becomes as cold as it will get. (This could take as little as five to thirty seconds if there has been recent heavy water use such as showering or toilet flushing. Otherwise, it could take two minutes or longer.) The more time water has been sitting in your home's pipes, the more lead it may contain.

◆ Only Use Cold Water for Consumption

Use *only* water from the cold-water tap for drinking, cooking, and especially for making baby formula. Hot water is likely to contain higher levels of lead.

The two actions recommended above are very important to the health of your family. They will probably be effective in reducing lead levels because most of the lead in household water usually comes from the plumbing in your house, not from the local water supply.

◆ Have Your Water Tested

After you have taken the two precautions above for reducing the lead in water used for drinking or cooking, **have your water tested**. The only way to be sure of the amount of lead in your household water is to have it tested by a competent laboratory. Your water supplier may be able to offer information or assistance with testing. Testing is especially important for apartment dwellers, because flushing may not be effective in high-rise buildings with lead-soldered central piping.

For more details on the problem of lead in drinking water and what you can do about it, read the questions and answers in the remainder of this booklet. *Your local or state department of health or environment might be able to provide additional information.*



Q Why is lead a problem?

A Although it has been used in numerous consumer products, lead is a toxic metal now known to be harmful to human health if inhaled or ingested. Important sources of lead exposure include: ambient air, soil and dust (both inside and outside the home), food (which can be contaminated by lead in the air or in food containers), and water (from the corrosion of plumbing). On average, it is estimated that lead in drinking water contributes between 10 and 20 percent of total lead exposure in young children. In the last few years, federal controls on lead in gasoline have significantly reduced people's exposure to lead.

The degree of harm depends upon the level of exposure (from all sources). Known effects of exposure to lead range from subtle biochemical changes at low levels of exposure, to severe neurological and toxic effects or even death at extremely high levels.

Q Does lead affect everyone equally?

A Young children, infants and fetuses appear to be particularly vulnerable to lead poisoning. A dose of lead that would have little effect on an adult can have a big effect on a small body. Also, growing children will more rapidly absorb any lead they consume. A child's mental and physical development can be irreversibly stunted by over-exposure to lead. In infants, whose diet consists of liquids made with water - such as baby formula - lead in drinking water makes up an even greater proportion of total lead exposure (40 to 60 percent).

Q How could lead get into my drinking water?

A Typically, lead gets into your water after the water leaves your local treatment plant or your well. That is, the source of lead in your home's water is most likely pipe or solder in your home's own plumbing.

The most common cause is corrosion, a reaction between the water and the lead pipes or solder. Dissolved oxygen, low pH (acidity) and low mineral content in water are common causes of corrosion. All kinds of water, however, may have high levels of lead.

One factor that increases corrosion is the practice of grounding electrical equipment (such as telephones) to water pipes. Any electric current traveling through the ground wire will accelerate the corrosion of lead in the pipes. (Nevertheless, wires should not be removed from pipes unless a qualified electrician installs an adequate alternative grounding system.)



Q Does my home's age make a difference?

A Lead-contaminated drinking water is most often a problem in houses that are either very old or very new.

Up through the early 1900's, it was common practice, in some areas of the country, to use lead pipes for interior plumbing. Also, lead piping was often used for the service connections that join residences to public water supplies. (This practice ended only recently in some localities.) Plumbing installed before 1930 is most likely to contain lead.

Copper pipes have replaced lead pipes in most residential plumbing. However, the use of lead solder with copper pipes is widespread. Experts regard this lead solder as the major cause of lead contamination of household water in U.S. homes today. New brass faucets and fittings can also leach lead, even though they are "lead-free."

Scientific data indicate that the newer the home, the greater the risk of lead contamination. Lead levels decrease as a building ages. This is because, as time passes, mineral deposits form a coating on the inside of the pipes (if the water is not corrosive). This coating insulates the water from the solder. But, during the first five years (before the coating forms) water is in direct contact with the lead. More likely than not, water in buildings less than five years old has high levels of lead contamination.

Q How can I tell if my water contains too much lead?

A You should have your water tested for lead. Testing costs between \$20 and \$100. Since you cannot see, taste, or smell lead dissolved in water, testing is the only sure way of telling whether or not there are harmful quantities of lead in your drinking water.

You should be particularly suspicious if your home has lead pipes (lead is a dull gray metal that is soft enough to be easily scratched with a house key), if you see signs of corrosion (frequent leaks, rust-colored water, stained dishes or laundry, or if your non-plastic plumbing is less than five years old. Your water supplier may have useful information, including whether or not the service connector used in your home or area is made of lead.

Testing is especially important in high-rise buildings where flushing might not work.

Q How do I have my water tested?

A Water samples from the tap will have to be collected and sent to a qualified laboratory for analysis. Contact your local water utility or your local health department for information and assistance. In some instances, these authorities will test your tap water for you, or they can refer you to a qualified laboratory. You may find a qualified testing company under "Laboratories" in the yellow pages of your telephone directory.

You should be sure that the lab you use has been approved by your state or by EPA as being able to analyze drinking water samples for lead contamination. To find out which labs are qualified, contact your state or local department of the environment or health.

Q What are the testing procedures?

A Arrangements for sample collection will vary. A few laboratories will send a trained technician to take the samples; but in most cases, the lab will provide sample containers along with instructions as to how you should draw your own tap-water samples. If you collect the samples yourself, make sure you follow the lab's instructions exactly. Otherwise, the results might not be reliable.

Make sure that the laboratory is following EPA's water sampling and analysis procedures. Be certain to take a "first draw" and a "fully flushed" sample. (The first-draw sample - taken after at least six hours of no water use from the tap tested - will have the highest level of lead, while the fully

flushed sample will indicate the effectiveness of flushing the tap before using the water.)

Q How much lead is too much?

A Federal standards initially limited the amount of lead in water to 50 parts per billion (ppb). In light of new health and exposure data, EPA has set an action level of 15 ppb. If tests show that the level of lead in your household water is in the area of 15 ppb or higher, it is advisable - especially if there are young children in the home - to reduce the lead level in your tap water as much as possible. (EPA estimates that more than 40 million U.S. residents use water that can contain lead in excess of 15 ppb.)

Note: One ppb is equal to 1.0 microgram per liter ($\mu\text{g/l}$) or 0.001 milligram per liter (mg/l).

Q How can I reduce my exposure?

A If your drinking water is contaminated with lead or until you find out for sure there are several things you can do to minimize your exposure. Two of these actions should be taken right away by everyone who has, or suspects, a problem. The advisability of other actions listed here will depend upon your particular circumstances.

Immediate Steps

◆ The first step is to refrain from consuming water that has been in contact with your home's plumbing for more than six hours, such as overnight or during your work day. Before using water for drinking or cooking, "flush" the cold water faucet by allowing the water to run until you can feel that the water has become as cold as it will get. You must do this for each drinking water faucet-taking a shower will not flush your kitchen tap. Buildings built prior to about 1930 may have service connectors made of lead. Letting the water run for an extra 15 seconds after it cools should also flush this service connector. Flushing is important because the longer water is exposed to lead pipes or lead solder, the greater the possible lead contamination. (The water that comes out after flushing will not have been in extended contact with lead pipes or solder.)

Once you have flushed a tap, you might fill one or more bottles with water and put them in the refrigerator for later use that day. (The water that was flushed - usually one to two gallons - can be used for non-consumption purposes such as washing dishes or clothes; it needn't be wasted.)

Note: Flushing may prove ineffective in high-rise buildings that have large-diameter supply pipes joined with lead solder.

◆ The second step is to never cook with or consume water from the hot-water tap. Hot water dissolves more lead more quickly than cold water. So, do not use water taken from the hot tap for cooking or drinking, and especially not for making baby formula. (If you need hot water, draw water from the cold tap and heat it on the stove.) Use only thoroughly flushed water from the cold tap for any consumption.

Definitions

Corrosion: A dissolving and wearing away of metal caused by a chemical reaction (in this case, between water and metal pipes, or between two different metals).

First Draw: The water that immediately comes out when a tap is first opened.

Flush: To open a cold-water tap to clear out all the water which may have been sitting for a long time in the pipes. In new homes, to flush a system means to send large volumes of water gushing through the unused pipes to remove loose particles of solder and flux. (Sometimes this is not done correctly or at all.)

Flux: A substance applied during soldering to facilitate the flow of solder. Flux often contains lead and can, itself, be a source of contamination.

Naturally soft water: Any water with low mineral content, lacking the hardness minerals calcium and magnesium.

Public Water System: Any system that supplies water to 25 or more people or has 15 or more service connections (buildings or customers).

Service Connector: The pipe that carries tap water from the public water main to a building. In the past these were often made of lead.

Soft water: Any water that is not "hard." Water is considered to be hard when it contains a large amount of dissolved minerals, such as salts containing calcium or magnesium. You may be familiar with hard water that interferes with the lathering action of soap.

Solder: A metallic compound used to seal joints in plumbing. Until recently, most solder contained about 50 percent lead.

Other Actions

◆ If you are served by a public water system (more than 219 million people are) contact your supplier and ask whether or not the supply system contains lead piping, and whether your water is corrosive. If either answer is yes, ask what steps the supplier is taking to deal with the problem of lead contamination.

Drinking water can be treated at the plant to make it less corrosive. Cities such as Boston and Seattle have successfully done this for an annual cost of less than one dollar per person. (Treatment to reduce corrosion will also save you and the water supplier money by reducing damage to plumbing.)

Water mains containing lead pipes can be replaced, as well as those portions of lead service connections that are under the jurisdiction of the supplier.

◆ If you own a well or another water source, you can treat the water to make it less corrosive. Corrosion control devices for individual households include calcite filters and other devices. Calcite filters should be installed in the line between the water source and any lead service connections or lead-soldered pipe. You might ask your health or water department for assistance in finding these commercially, available products.

◆ Recently a number of cartridge type filtering devices became available on the market. These devices use various types of filtering media, including carbon, ion exchange resins, activated alumina and other privately mar-

keted products. Unless they have been certified as described below, the effectiveness of these devices to reduce lead exposure at the tap can vary greatly.

It is highly recommended that before purchasing a filter, you verify the claims made by the vendor. If you have bought a filter, you should replace the filter periodically as specified by the manufacturer. Failure to do so may result in exposure to high lead levels.

Two organizations can help you decide which type of filter is best for you. The National Sanitation Foundation, International (NSF), and independent testing agency, evaluates and certifies the performance of filtering devices to remove lead from drinking water. Generally, their seal of approval appears on the device and product packaging. The Water Quality Association (WQA) is an independent, not-for-profit organization that represents firms and individuals who produce and sell equipment and services which improves the quality of drinking water. WQA's water quality specialists can provide advice on treatment units for specific uses at home or business.

For additional information regarding the certification program, contact NSF at (313) 769-8010, or WQA at (708) 505-0161, ext. 270.

◆ You can purchase bottled water for home and office consumption. (Bottled water sold in interstate commerce is regulated by the Food and Drug Administration. Water that is bottled and sold within a state is under state regulation. EPA does not regulate bottled water.)

◆ When repairing or installing new plumbing in old homes, instruct, in writing, any plumber you hire to use only lead-free materials.

◆ When building a new home, be sure lead-free materials are used. Before you move into a newly built home, remove all strainers from faucets and flush the water for at least 15 minutes to remove loose solder or flux debris from the plumbing. Occasionally, check the strainers and remove any later accumulation of loose material.

Q What about lead in sources other than drinking water?

A As mentioned above, drinking water is estimated to contribute only 10 to 20 percent of the total lead exposure in young children. Ask your local health department or call EPA for more information on other sources of exposure to lead. A few general precautions can help prevent contact with lead in and around your home:

❖ Avoid removing paint in the home unless you are sure it contains no lead. Lead paint should only be removed by someone who knows how to protect you from lead paint dust. However, by washing floors, window sills, carpets, upholstery and any objects children put in their mouths, you can get rid of this source of lead.

❖ Make sure children wash their hands after playing outside in the dirt or snow.

❖ Never store food in open cans. Keep it in glass plastic or stainless steel containers. Use glazed pottery only for display if you don't know whether it contains lead.

❖ If you work around lead, don't bring it home. Shower and change clothes at work and wash your work clothes separately.

Q Aren't there a lot of types of treatment devices that would work?

A There are many devices which are certified for effective lead reduction, but devices that are not designed to remove lead will not work.

It is suggested that you follow the recommendations below before purchasing any device:

◆ Avoid being misled by false claims and scare tactics. Be wary of "free" water testing that is provided by the salesperson to determine your water quality; many tests are inaccurate or misleading. Research the reputation and legitimacy of the company or sales representative.

◆ Avoid signing contracts or binding agreements for "one-time offers or for those that place a lien on your home. Be very careful about giving credit card information over the phone. Check into any offers that involve prizes or sweepstakes winnings.

◆ As suggested above, verify the claims of manufacturers by contacting the National Sanitation Foundation International or the Water Quality Association.

Q What is the government doing about the problem of lead in household water?

A There are two major governmental actions to reduce your exposure to lead:

◆ Under the authority of the Safe Drinking Water Act, EPA set the action level for lead in drinking water at 15 ppb. This means utilities must ensure that water from the customer's tap does not exceed this level in at least 90 percent of the homes sampled. If water from the tap does exceed this limit, then the utility must take certain steps to correct the problem. Utilities must also notify citizens of all violations of the standard.

◆ In June 1986, President Reagan signed amendments to the Safe Drinking Water Act. These amendments require the use of "lead-free" pipe, solder, and flux in the installation or repair of any public water system, or any plumbing in a residential or non-residential facility connected to a public water system.

Under the provisions of these amendments, solders and flux will be considered "lead-free" when they contain not more than 0.2 percent lead. (In the past, solder normally contained about 50 percent lead.) Pipes and fittings will be considered "lead-free" when they contain not more than 8.0 percent lead.

These requirements went into effect in June 1986. The law gave state governments until June 1988 to implement and enforce these new limitations. Although the states have banned all use of lead materials in drinking water systems, such bans do not eliminate lead contamination within existing plumbing. Also, in enforcing the ban, some states have continued to find illegally used lead solder in new plumbing installations. While responsible plumbers always observe the ban, this suggests that some plumbing installations or repairs using lead solder may be escaping detection by the limited number of enforcement personnel.

Where can I get more information?

First contact your county or state department of health or environment for information on local water quality.

For more general information on lead, there are now two toll-free telephonic services:

EPA Safe Drinking Water Hotline

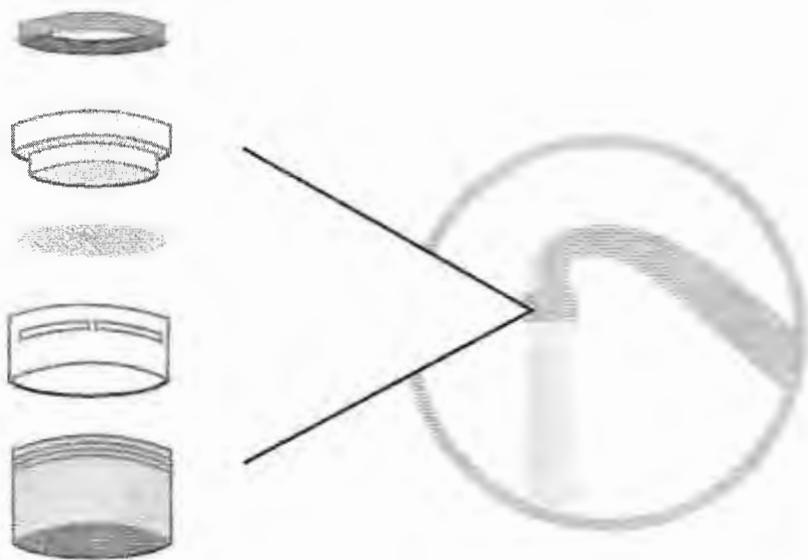
1-800-426-4791

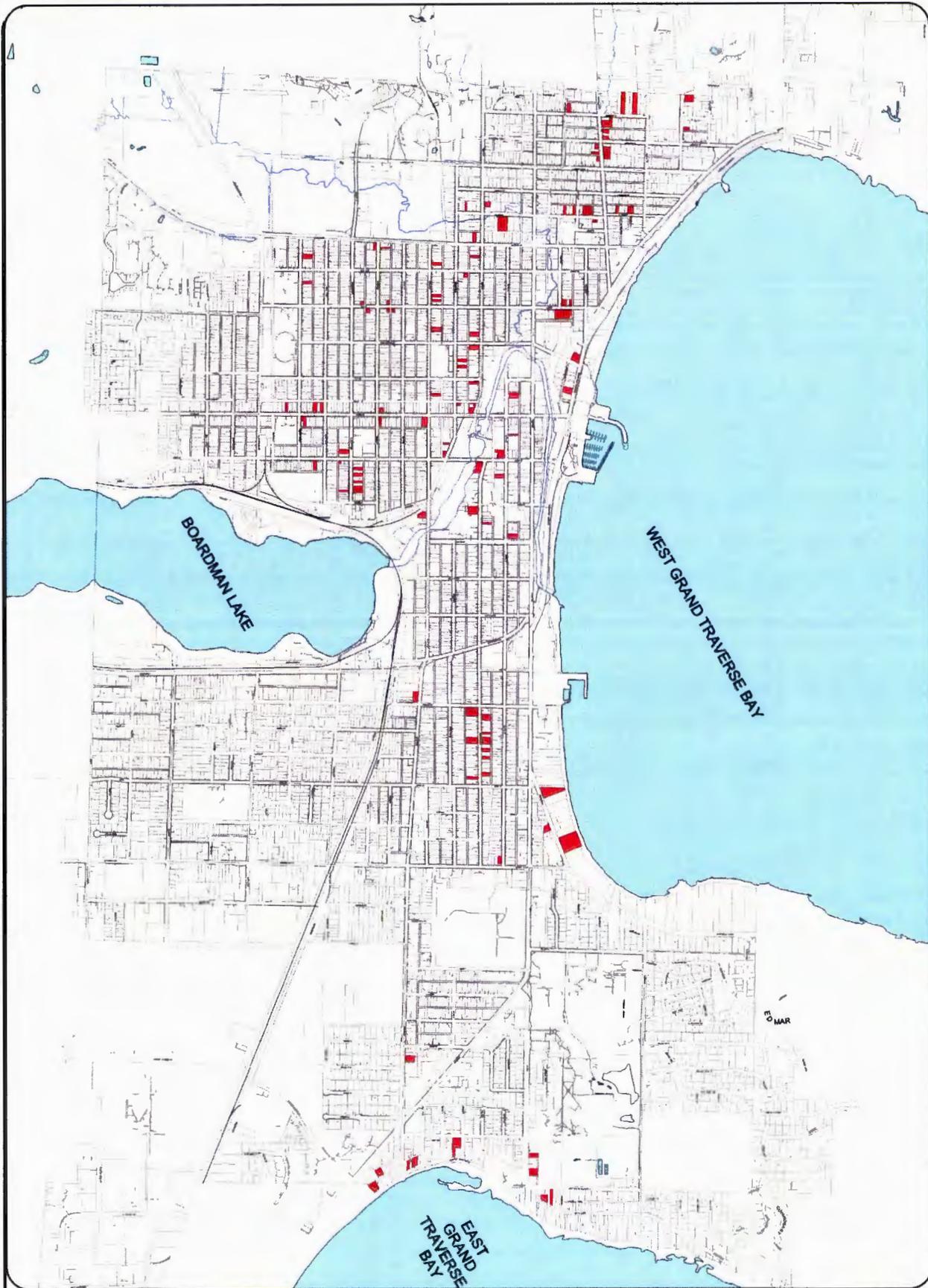
National Lead Information Center

1-800-LEAD-FYI

Clean Faucet Aerators Weekly

- ① Unscrew the end-piece of your faucet where the water comes out. This is the aerator. (Make note of how the pieces come off, to put back together. Parts vary.)
- ② Remove the screen and rinse out any dirt that has collected.
- ③ Screw it back on.





TC GIS
City of Traverse City

Lead Gooseneck Locations

Lead Gooseneck Services
■ **Yes (126 Properties)**



This map is based on digital data from the City of Traverse City. The City of Traverse City does not accept any responsibility for errors, omissions or positional accuracy. There are no warranties expressed or implied.

1 STATE OF MICHIGAN

2 IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

3 NORTHERN MICHIGAN ENVIRONMENTAL,
4 Plaintiff,

5 v.

Case No. 15-31341-AA

6 CITY OF TRAVERSE CITY,
7 Defendant,
_____ /

8
9 JUDGE'S OPINION

10 BEFORE THE HONORABLE PHILIP E. RODGERS, JR.

11 Thursday, March 31, 2016 - Traverse City, Michigan

12 APPEARANCES:

13 For Pine Street:

14 JOSEPH D. SARAFA (P36056)
15 9815 Miami Beach Rd.
Williamsburg, Michigan 49690
231-947-8048

16 For The City:

17 LAUREN TRIBLE-LAUCHT (P71936)
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Traverse City, Michigan 49684
231-922-4404

19 For Northern Michigan
20 Environmental and Townsend:

21 KATHRYN M. WALKER (P75075)
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22
23 Karen M. Copeland, CSR, RPR
24 328 Washington St.
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25 231-922-2773

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I N D E X
WITNESSES

None

EXHIBITS

None

1 Traverse City, Michigan

2 Thursday, March 31, 2016 - at 1:31 p.m.

3 (Court and counsel present)

4 THE COURT: At this time we're going to take up
5 the matter of Northern Michigan Environmental Action and
6 Priscilla Townsend versus The City of Traverse City and
7 Pine Street Development One, LLC. This is the time and
8 place set by the Court for issuing this bench opinion
9 with regard to the issues that have been presented to the
10 Court.

11 When this case last came before the Court, it
12 was to consider injunctive relief pending a referendum
13 election to amend the City's zoning code. For reasons
14 described at that hearing, the passage of time and
15 legislative action had deprived the public of that right.

16 The Traverse City Commission granted a Special
17 Land Use Permit (SLUP) to Pine Street Development, LLC on
18 November 3rd, 2015. The Court is now asked to review, on
19 appeal, the SLUP and the application of Section 28 of the
20 City's Charter. The issues have been extensively briefed
21 and the Court has reviewed the parties' briefs as well as
22 the cases and statutes cited therein.

23 The Zoning Enabling Act provides that a local
24 unit of government may provide by zoning ordinance for
25 the regulation of land development and the establishment

1 of one or more districts, which regulate the use of land
2 and structures to meet the needs of the state's citizens.
3 With respect to zoning decisions, the Michigan
4 Constitution states that:

5 All final decisions, findings, rulings and
6 orders of any administrative officer or agency existing
7 under the Constitution or by law, which are judicial or
8 quasi-judicial, and affect private rights or licenses,
9 shall be subject to direct review by the courts as
10 provided by law. This review shall include, as a
11 minimum, the determination whether such final decisions,
12 findings, rulings and orders are authorized by law; and,
13 in cases in which a hearing is required, whether the same
14 are supported by competent, material and substantial
15 evidence on the whole record.

16 Substantial or substantive evidence is evidence
17 that a reasonable person would accept as sufficient to
18 support a conclusion. While this requires more than a
19 scintilla of evidence it may be substantially less than a
20 preponderance. Substantial evidence includes facts based
21 on inferences that are legitimate and supportable. The
22 substantial evidence test is not whether a contrary
23 decision could have been supported by substantial
24 evidence, but whether the decision the agency actually
25 made was supported by substantial evidence.

1 A board's decision should be affirmed unless:
2 (1) it is contrary to law, (2) based on improper
3 procedure, (3) not supported by competent, material and
4 substantial evidence on the record, or, (4) an abuse of
5 discretion.

6 The Special Land Use Permit application filed
7 by Pine Street Development One, LLC contains at Section
8 1364.02 a list of eight general standards for approval.
9 Among those standards (c) and (d) state as follows:

10 (c) the use shall be served adequately by
11 existing public facilities and services, such as
12 highways, streets, police and fire protection, drainage
13 structures, refuse disposal, water and sewage facilities
14 and schools; and,

15 (d) the use shall not create excessive
16 additional requirements at public cost for public
17 facilities and services.

18 The Developers address each of these standards
19 by stating that the proposed development will be
20 adequately served by existing public infrastructure and
21 does not necessitate excessive additional requirements at
22 public expense. The Special Land Use Permit granted by
23 the City Commission incorporates by reference a Staff
24 Report dated October 29, 2015. This report states in
25 conclusory terms that the proposed development will be

1 adequately served by existing public infrastructure and
2 services, but notes that street improvements will be
3 made.

4 The City goes on to reassure itself and the
5 public that the project will not create excessive
6 additional requirements for infrastructure, facilities
7 and services at public expense by referencing the same
8 Staff Report and then stating, "The project will bring
9 additional tax revenue which will provide for additional
10 infrastructure, facilities and services, including
11 through TIF and Brownfield programs."

12 The record is bereft of any document, Staff
13 Report or Commission comment describing the source of the
14 TIF funds, the amounts diverted from general tax revenues
15 annually and the time period the diversion will last. By
16 law, a tax increment financing application and a
17 Brownfield application must contain a statement of the
18 tax benefit sought and its impact on all affected taxing
19 jurisdictions. Neither application has yet been made and
20 no draft application may be found in the record. Nor is
21 there any other financial statement describing what the
22 Developers' total tax benefit is projected to be for the
23 Pine Street project. At Page 72 of the transcript, a
24 Commissioner spoke to the use of past TIF funds for
25 public parking decks, streetscapes, bridges, sidewalks

1 and water mains. However, there is nothing in this
2 record to demonstrate any public ownership of a parking
3 area or a bridge after TIF funds are expended on the Pine
4 Street Project.

5 To the contrary, the original Front Street
6 streetscape project was paid for as a special assessment
7 district. TIF 97, referred to by the same Commissioner,
8 did not even exist when the streetscape project was
9 constructed. And, the Riverwalk improvements mentioned
10 in the Staff Report are not a part of the Pine Street
11 project and are envisioned as a future City expense. The
12 same Staff Report indicated no need for water, electrical
13 or sewer improvements. So, apparently undisclosed
14 millions of dollars will be spent to bumpout public
15 sidewalks and install streetscape lighting and benches.

16 If there is more public benefit to be garnered,
17 it cannot be found in this record. Providing Pine Street
18 with a private parking garage is certainly not a public
19 benefit. No portion of this record may be remotely
20 considered as a candid disclosure of the actual public
21 expense let alone an analysis of those costs relative to
22 perceived public benefits.

23 Almost unbelievably the Staff Report adopted by
24 the Commission discussing section 1364.02(d) refers
25 explicitly to TIF as a source of revenue as well as

1 "additional tax revenues generated by the development" to
2 offset increased municipal service costs, yet then finds,
3 "The building will not create any excessive expenditure
4 with public funds."

5 One cannot help but recall the Queen's comment
6 to Alice on the practice of believing impossible things,
7 "why, she said, sometimes I've believed as many as six
8 impossible things before breakfast!" So it must be with
9 City staff.

10 TIF funds are local public tax dollars. They
11 are neither state nor federal funds. TIF funds are
12 property tax revenues being diverted from the numerous
13 local general funds for the Developers' benefit and the
14 Developers do not pay for or contribute to City services
15 for an undisclosed number of years. Evidence to the
16 contrary cannot be found in this record.

17 without doubt the Pine Street project
18 contemplates street improvements and an impact on City
19 services. The notion that two 9-story buildings can be
20 constructed with 162 residences and related parking and
21 commercial space and not have any marginal impact on
22 infrastructure, facilities or services is absurd. The
23 TIF and Brownfield financing contemplated here are not
24 the Developers' contribution to City services such as
25 highways, streets, police and fire protection.

1 To the contrary, those infrastructure costs
2 which are traditionally paid for by the Developers will
3 instead be paid for with tax funds that would have
4 otherwise gone to the City's general fund. In other
5 words, the Developers will be using these tax dollars to
6 pay for hard costs associated with their own development
7 and will contribute no marginal revenue to support
8 police, fire or streets, which expenses are the largest
9 components of the City's budget. It is hard to imagine
10 how the City Commission determined this was a good idea
11 without first considering the amount of tax forgiveness
12 provided and the time period over which it extends. Not
13 having crossed that basic financial threshold, the
14 Commission was in no position to consider whether it was
15 sensible for all other city taxpayers to support this
16 development.

17 Traverse City residents currently support
18 police and fire budgets that dwarf those of its larger,
19 more populous, and wealthier neighbor to the south,
20 Garfield Township. The size of the police force reflects
21 a substantial draw of tourists to downtown festivals,
22 attractions and to the City's restaurants and retail
23 shops. Despite this already existing subsidy to the
24 central business district, central business district
25 development continues on the backs of residential

1 neighborhoods and those non-TIF financed central business
2 district properties. This form of taxpayer funded
3 development shows no signs of abatement.

4 More stunning are comments found at Page 71 of
5 the transcript. First is the statement that TIF projects
6 create growth that would not otherwise happen. There is
7 nothing in the record to support this conclusion and it
8 is belied by the impressive commercial and residential
9 growth in the surrounding townships without TIF funds.
10 Then, without record support, a Commissioner states that
11 the baseline tax support would go from \$13,000 to \$60,000
12 "at a minimum." Such a staff estimate, if it exists, is
13 not on the record.

14 Finally, in the realm of believing impossible
15 things, is the Commissioner's comment that "we are not as
16 a City out of our general tax fund dollars providing
17 infrastructure to support this project." Streetscapes
18 lighting, bumpouts, parking, river bank stabilization and
19 environmental remediation are clearly infrastructure
20 projects. One can and should debate the merits of using
21 tax dollars for such projects and not pretend that TIF or
22 Brownfield funds are other than a diversion of public
23 monies that would otherwise go to several general funds.

24 In Section (d) of the Staff Report, adopted by
25 the City, the finding of no excessive additional services

1 is accepted. In the preceding discussion found at
2 section (c), the fire department's concern with
3 maneuvering its 55 foot ladder truck is resolved.
4 However, this truck may well be the single most expensive
5 piece of City equipment. Should there be a fire and a
6 nine-story building collapse on that truck, it is
7 important to note that the Pine Street Development would
8 be contributing zero dollars to the truck's replacement.
9 Those fire and police costs are now and will, for the
10 indefinite future, continue to be entirely borne by the
11 one and two story homes that make up Traverse City's
12 neighborhoods.

13 within the record provided to the Court, the
14 Developers appropriately abandoned the belief that this
15 project could provide workforce housing. The developers
16 have stated they cannot discriminate in the allocation of
17 public subsidized housing.

18 As to the containment of urban sprawl, at least
19 one Commissioner recognized that the City's land use
20 decisions can have no impact on urban sprawl.

21 There is no action which the City Commission
22 can take legally to direct the planning decisions of
23 contiguous townships. Nor is there a serious argument
24 being made that the construction of any building in
25 downtown Traverse City will have any meaningful impact on

1 the planning and housing decisions of those same
2 townships. If other City Commissioners are seriously
3 justifying a massive tax subsidy on the backs of local
4 homeowners to prevent sprawl in neighboring townships, it
5 has not in any intelligent way discussed how it believe
6 that would occur and why the City residents should pay
7 for it. An analysis and the evidence to support the
8 sprawl proposition is completely absent in the record.

9 The confusion some Commissioners have over the
10 City's property taxes is palpable. At Page 89 of the
11 transcript, a Commissioner supports the SLUP and then
12 states "Reducing the costs of the City by, one,
13 increasing the per capita share of taxes as we see more
14 people living in a compact development."

15 First, the City's property tax millage is
16 assessed against real estate, not people. Second,
17 increasing density does not change the property tax rate
18 or the real estate to which it applies. Third,
19 increasing density will not lower overall costs to the
20 City within its existing limits. Adding people and
21 buildings adds costs. That may well be a good thing, but
22 it surely does not lower costs or taxes, especially where
23 the new developments make no contribution to the general
24 fund.

25 should the City believe it is so wealthy it can

1 afford to give the Pine Street Development and others
2 millions of dollars in tax relief, there is no evidence
3 that such a decision was made in the context of the
4 City's own property tax millage, which is more than four
5 times that of its contiguous townships. With the millage
6 rate a fraction of that found in the City of Traverse
7 City, Garfield Township has undergone massive economic
8 development. Again, this development has occurred in the
9 absence of tax increment financing. The City may believe
10 that growth would not occur without TIF, but there is
11 nothing in the record to support such a conclusion.

12 One could argue that the City has less property
13 to tax than its surrounding townships and such an
14 argument rings true. More than 40 percent of the City's
15 land mass is not taxed. Therefore, the airport, the
16 college, churches, schools and parks as well as
17 governmental buildings all support a regional population,
18 but the City does not receive regional tax support.
19 Commissioners should at least consider why the City
20 should not maximize tax revenue from the property
21 available to be taxed as opposed to giving it away as
22 construction costs to Developers whose contribution to
23 urban density will not carry with it for many years any
24 form of concomitant tax relief for the services
25 associated with it.

1 The notion that Brownfield or TIF funds are a
2 County tax contribution to the City is also fallacious.
3 Intercepting County taxes would benefit the City if they
4 went to the City's general fund. They do not.
5 Brownfield funds, properly administered, serve an
6 important environmental goal. To the degree that
7 Brownfield funds intercept City and County general fund
8 dollars to eradicate environmental contamination those
9 funds benefit the environment, but not the general fund
10 of the City. To the extent Brownfield funds do not
11 address environmental contamination and are simply used
12 to combat so-called blight, they are simply a disguised
13 form of tax increment financing or another vehicle by
14 which Developers do not support the general fund, but use
15 their tax revenues to pay for their own project. In this
16 case, and to the Developers' credit, at Page 27 of the
17 transcript, they have limited their use of Brownfield
18 dollars to remediation of contamination at the building
19 site.

20 Similarly, the interception of County tax
21 dollars to pay for the Developers' private parking garage
22 by definition does not create publicly owned parking.

23 There is no discussion in the record by any
24 Commissioner as to why the 162 residences subsumed within
25 the Pine Street project should have the benefit of

1 police, fire and street services towards which they pay
2 nothing for an undisclosed number of years. The same
3 question could be asked of the 21,869 square feet of
4 retail space and 3,600 square foot restaurant. It is as
5 though a substantial portion of Traverse Heights, the
6 Central Neighborhood or Slabtown plus a block of Front
7 Street stopped contributing to the City's general fund.
8 Someone must pay for these services. As things now
9 stand, whether one lives on Peninsula Drive or in one of
10 the Traverse City's more modest neighborhoods, the cost
11 of those City services will be borne by local residents
12 including subsidies for the parking owned by the
13 Developers and used by their tenants and those who occupy
14 the associated retail space. Should the City Commission
15 actually review and intelligently discuss the millions of
16 dollars of tax relief being provided for this project and
17 why such funding is actually necessary and why local
18 taxpayers should foot the bill for additional City
19 services, then the objections become political and not
20 legal.

21 In summary, the Developers provided an
22 application for a Special Land Use Permit which
23 represents that they will pay for additional costs
24 associated with the proposed development, but opines that
25 such costs will not be meaningful. The Developers'

1 request for Brownfield and tax increment financing has
2 never been a secret. When the City issued Special Land
3 Use Permit it specifically refers to an additional tax
4 revenue stream provided by TIF and Brownfield programs
5 and relied on a Staff Report that did the same. The
6 factual finding that there will be additional tax revenue
7 for infrastructure facilities and services, other than in
8 an undefined and distant future, is categorically false.
9 All of the additional tax revenue generated by this
10 project will be used by Developers for their own
11 infrastructure costs including remediation of any
12 pollution that may exist on the building site.

13 Tax increment financing and Brownfield funding
14 are not gifts from the state or federal government. They
15 represent local property tax funds which would otherwise
16 be paid by Developers into the general funds of the City
17 and the County. Certainly, those in the City's
18 neighborhoods who may wish to repaint or reside their
19 homes or improve landscaping this summer are not equally
20 allowed to deduct such costs from their property tax
21 revenues to correct their perception of blight.

22 In approving this Special Land Use Permit the
23 City Commission has either been hopelessly naive and
24 uninformed with respect to the source and use of TIF and
25 Brownfield monies or less than candid with the general

1 public.

2 The questions which the City Commission has
3 never answered are, can it afford to deal with vacant
4 lots by subsidizing the developments thereon for decades
5 and is it fair to do so by financing the marginal
6 increase in the demand for services out of the pockets of
7 every other City taxpayer? If the City continues to
8 expend taxpayer funds in an effort to prevent taxpayers
9 from voting on these projects, it would seem that some
10 meaningful discussion regarding this type of significant
11 taxpayer subsidy at City residents' expense should occur.
12 The City should take a look at the cost associated with
13 its entire participation in the Brownfield and TIF
14 programs, the properties eligible for consideration and
15 be prepared to explain why City taxpayers should pay for
16 a substantial increase in urban density and the services
17 associated with it. And in so doing, the City Commission
18 should candidly recognize that it cannot limit publicly
19 subsidized housing to downtown workers and it cannot
20 legally impact land use decisions of contiguous townships
21 who have their own independent authority to plan and
22 zone.

23 Remanding this permit to the City Commission
24 for further consideration will not be quickly or easily
25 accomplished. A meaningful public hearing that allows

1 comment from both sides regarding financial costs and
2 perceived benefits and who is actually paying for them
3 will be controversial. A substantive discussion of
4 comparative property tax rates, the realistic limitations
5 on the control of sprawl and the impact on the City's
6 general fund all require serious discussion and not
7 simply the incorporation by reference of conclusory and
8 occasionally unbelievable statements made by members of
9 City staff.

10 It is also important to emphasize that these
11 concerns are vital to the community and exist
12 irrespective of any building's height. As the Court
13 noted during the recent oral arguments, if Section 28
14 applies to this project it applies irrespective of the
15 building's height, and if Section 28 applies to every
16 project that has utilized TIF funds, the public is
17 undoubtedly estopped from asserting those rights as to
18 past projects. The argument that other projects were not
19 subject to a public vote and perhaps, approved by the
20 City in decisions equally bereft of meaningful financial
21 analysis, is no excuse not to engage in a thorough
22 consideration of the financial costs and benefits
23 associated with such projects in the future.

24 For all the foregoing reasons, the Court
25 remands this matter to the Traverse City Commission for a

1 cogent analysis of the project's impact on
2 infrastructure, facilities and services, the source of
3 funds to pay for that impact and an intelligent
4 discussion of the perceived benefits that support
5 justifying such extensive public subsidies on the backs
6 of local taxpayers. If the Commission has this
7 discussion and believes it can justify its decision, it
8 will explain why and approve this SLUP once more and with
9 a more robust record. Only at that time would the issue
10 of Section 28 become ripe for consideration.

11 Furthermore, in fairness to the parties, the
12 Court believes some comments should be made with regard
13 to Section 28. The first is Brownfield, TIF and MSHDA
14 housing dollars are all public funds. If there is no
15 other impediment to the application of Section 28, then
16 the use of those public funds would arguably trigger the
17 need for an election. However, the Court believes that
18 the Brownfield subsidy for environmental remediation and
19 removal of contamination not caused by the current
20 property owner reflects an overriding state policy which
21 would prohibit a Section 28 public vote. The Court is
22 not so convinced that merely calling the property
23 blighted and disguising what are otherwise economic
24 development funds as Brownfield dollars should be
25 similarly treated.

1 The MSHDA housing subsidies are derived from
2 Michigan's implementation of the national housing program
3 to provide subsidized housing to low income residents.
4 To the extent this national policy exists and is
5 implemented by the State of Michigan, the Court does not
6 believe that Section 28 could be used to require a public
7 vote on MSHDA financing.

8 Tax increment financing is a creature of state
9 law but it comes with no state or federal subsidy to the
10 City or County. It is simply the use of the Developers'
11 local property tax dollars to support the Developers own
12 project in derogation of a contribution to local
13 jurisdictions general funds. If Section 28 applies, it
14 does so to control the seeming unrelenting willingness of
15 City Commissioners to spend the dollars of the many to
16 benefit the few. This opinion resolves the last material
17 issue presented to the Court. The Special Land Use
18 Permit is now vacated and the case is hereby remanded to
19 the City Commission for further proceedings consistent
20 with this decision and order.

21 Thank you very much.

22 MR. PARSONS: Thank you, your Honor.

23 (1:54 p.m. - proceedings concluded)

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CERTIFICATE OF OFFICIAL COURT REPORTER

STATE OF MICHIGAN
COUNTY OF GRAND TRAVERSE

I, Karen M. Copeland, Official Court Reporter in and for the County of Grand Traverse, State of Michigan, do hereby certify that this is a true and correct transcript of my stenotype notes with the assistance of Computer-Assisted Transcription to the best of my ability of the proceedings held before the Honorable Philip E. Rodgers, Jr., Circuit Court Judge in the matter of NORTHERN MICHIGAN ENVIRONMENTAL v. CITY OF TRAVERSE CITY, File No. 15-31341-AA, on Thursday, March 31, 2016.

S/: Karen M. Copeland
Karen M. Copeland, CSR-6054, RPR
Official Court Reporter

Dated: This 1st day of April, 2016