

MLP Board Meeting Minutes

Friday March 15, 2024 - 5:30 P.M.

Present: Roger Fuller, Larry Cervelli, Joe Gazillo, Justin West, MLP Manager,
Jack Henry, Associate MLP Manager

Absent: Kady von Schoeler, Jeff Frechette

Public Present: None

A. Approval of February 8, 2024 minutes

The meeting called to order at 5:40 p.m. on March 15, 2024. The minutes of the February 8, 2024 meeting were reviewed and amended. Mr. Fuller moved acceptance of the minutes as amended. Mr. Cervelli seconded the motion.

Vote: Yea 3, Nay 0, Abstentions 0

B. Contribution to Town Debt Service

Mr. West opened the discussion by stating several points that the board should be aware of in discussing the transfer of MLP funds to the Town for the debt service. They were:

- The broadband debt is a Town debt not an MLP debt. The MLP contribution is voluntary.
- CAFII and MLP funds can only be used for MLP purposes. We must be able to account for this.
- The MLP can only pay what it can afford.
- We should recommend and vote on the amount to be transferred every year.
- The total MLP contribution will not exceed \$300,00.
- We have said in our Financial Objectives: "The Chesterfield Broadband MLP has the intention to help service the debt incurred by the Town for the construction of the broadband network. The Chesterfield Broadband MLP will cover the difference between the annual CAFII funding, and the annual loan obligation carried by the Town to the extent possible as determined by the MLP board."
- The MLP must be able to certify that the funds provided to the Town have all been spent on MLP purposes. To this end we are requesting that the Town account separately for MLP funds transferred to the Town and that they provide the MLP with annual reports on activity in that account.
- Therefore, after discussions with Roger, the managers recommend transferring \$59,580 to the Town to help service the broadband debt contingent on creation of a special account for those funds.

Mr. Henry explained that the CAFII funding issue is a complicated one and that there are many moving parts that make it hard to determine a concrete figure going forward. Mr. Gazillo asked for clarification on how the CAFII funds could be used. Mr. Henry responded

that CAFII funds come from the Federal Government and can be used for any MLP-related expense, including paying down the debt incurred by the Town for construction of the broadband network. The board agreed that using the CAFII funds to service the broadband construction debt would be the best use of those funds. Mr. Fuller explained that the debt service is due annually in September, which is different from the other Town debt which is due at the end of June. He further explained that the CAFII funds that are expected in May of this year will be a higher figure representing the first three years of the 10 annual payments. Mr. Fuller and Mr. Henry agreed that it would be most advantageous to put those extra funds onto principle, thus reducing the overall debt payment. In FY2024, the MLP voted, and Town Meeting approved, an article transferring \$29,874 to the Town to assist in paying the broadband construction debt. Since the CAFII funds had not come in when the FY23 payment was due, the Town fronted the portion that would have been covered by the CAFII funds.

Mr. Henry then showed the board the spreadsheet that he and Mr. Fuller had devised to calculate the suggested contribution by the MLP. Mr. Gazillo enquired whether the CAFII funding was guaranteed until FY2031 or for the full length of the loan. Mr. Fuller responded that it was guaranteed at this point as long as the MLP passed the tests required every year to validate that the network was delivering its promised speeds, etc. Mr. Fuller told the board that the Town had done really well with grants that allowed the Town to construct the network for approximately \$750,000, which is much less than anticipated. Mr. West expressed his gratitude to Mr. Fuller for all of his work in keeping track of the costs of the construction phase and in leveraging the available grants and funds to keep the overall cost down. Mr. Henry added that some of the other towns were carrying debts in excess of one million dollars.

Given the necessity of being able to account for the funds being used for MLP purposes, the managers recommended that the Town account for these funds separately and provide an annual statement of activity relative to those funds. Several members of the board suggested changes to that language and the final language was included in the motion. Mr. Cervelli moved to transfer the sum of fifty-nine thousand, five hundred and eighty dollars (\$59,580) from the Chesterfield Broadband Networks Operations Retained Earnings to the Town of Chesterfield, to offset principle on the debt to construct the Broadband Network, effective for fiscal year beginning on July 1, 2024, Dependent on these funds being accounted for separately and further that the Town provide an annual statement of activity relative to those funds. Mr. Gazillo seconded the motion. Vote: Yea 3, Nay 0, Abstentions 0

C. Update on MLP Board Election vs Appointment

Mr. West updated the board on additional information he had received in a telephone call with an attorney from the Massachusetts Attorney General's office. She indicated that there is no clear-cut determination they can make as to whether an MLP board should be elected or appointed. The AGs office cannot rescind a letter of approval unless ordered to do so by the court. If the current MLP board makes a decision and someone challenges it on the grounds that the board had no authority, as an appointed board, to make that decision and won, there is the possibility that all decisions of the appointed board could be invalidated. She said that the AGs letter of approval of the article establishing the original appointed board could be an oversight or could be the result of them determining that the

board could be appointed. He asked the board to instruct the managers as to what action they wished to take on this matter.

Mr. Fuller pointed out that the original article passed by Town Meeting, and approved by the AG's office, reflected the current thinking at the time and followed the example of several other towns that also had appointed boards. Mr. Gazillo pointed out that generally appointments to boards of corporations come from the CEO and are approved by the shareholders, in this case the citizens of Chesterfield. He further opined that having an elected board allowed for more transparency by placing the choice of board members in the hands of the subscribers. He then asked if there could be a hybrid method of both appointed and elected members. Mr. Fuller explained that, in the event of a vacant seat, or no one running for a position, the post becomes appointed in any case.

Mr. West floated the idea of having appointments be nominated by the MLP Board and then forwarded to the Select Board for appointment. Mr. Cervelli concurred stating "that is a transparent option." Mr. Fuller said he wanted to say how well that the current MLP board has worked together. He further opined that there is great value in having a member from the Finance Committee, the Select Board, a technical member, and at-large members who represent the community.

There was concern on the board about the possibility of a challenge to the authority of the MLP board on the basis of its being an appointed board. Mr. Fuller offered to discuss the matter with the Town attorney and get his opinion. Mr. West offered the services of the MLP attorney as well, if needed. The board agreed that due diligence on the part of the board was indicated to make sure they were not leaving the MLP open to future trouble on this point.

Mr. West recapped the discussion by stating that there were four main points. First, that there are manifold advantages to having an appointed board, as Mr. Fuller pointed out. Second, that there might be legal jeopardy involved, so if Mr. Fuller, the Town attorney, the MLP attorney, and the AGs office could provide clarity that would be helpful. Third, that to Mr. Cervelli's point, we draft a statement of intent or a board charter that clearly lays out the rationale and advantages that led us to have an appointed board. And fourth, that, as proposed by Mr. Gazillo, we have a process of the MLP board nominating members for the MLP board which are then forwarded to the Select Board for appointment. Mr. Fuller expressed his agreement with this plan, stating that the Select Board would absolutely want the opinion of the MLP board as to the selection of members of the MLP board. The board expressed approval of this plan and Mr. West promised to have the proposed documents for the May meeting.

D. Adjournment

A motion to adjourn was made by Mr. Cervelli, seconded by Mr. Gazillo.

Vote: Yea 3, Nay 0, Abstentions 0