

**Town of Fletcher – Select Board
Fletcher Town Clerk’s Office
September 11, 2023
Regular Meeting Minutes**

Present:

Members: Rich Bidwell, Jon Bondy, Bruce Douglas, Matt Gillilan, Matt Swartz

Guests: Scott Frennier, Scott Stortz, Aimee Tinker (Ass’t Town Clerk/Treasurer, Board Clerk), Tara Sweet (School Board Chair), Jennifer Getty, Tim Nulty, Leslie Nulty, Brian Davison, Raymond Collins

1) Call to Order

Jon called the meeting to order at 7:00pm

2) Regular Board Business

Broadband

Michelle Frennier (Fletcher resident) had emailed the Board a document she created regarding the Broadband project. She asked that it be posted on the web and shared with the public.

Jon created a status report on the project and shared it with MCF tonight as a courtesy. When the out-of-scope work was discovered, NBRC put a hold on invoice reimbursement while they investigated what happened. The Town and NBRC have been going back and forth via email and the Town is currently awaiting a response from NBRC. MCF’s attorney said NBRC cannot stop the project, so they have been continuing work.

MCF shared a color-coded map which showed the status of the project. They will need customers to sign up in order to generate income to pay back the loan. In case not everyone in the room was familiar with the details, Jon briefly explained NBRC and VEDA, who they are and the funds they contributed.

Scott Stortz asked how Consolidated Communications factors into this situation. Jon said the FCC created a map of underserved communities. CC was awarded a nationwide grant to serve said communities and some of that work will be in Fletcher. This will result in fiber installed over fiber.

Raymond Collins asked if this competition would limit MCF customers and therefore the income generated to pay back the loan. Jon said potentially, yes.

Rich said we don’t have enough money to wire all of Fletcher right now as it is so competition may not be a bad thing.

Jen Getty asked what the total cost of the project was and how much is left. Jon said approximately \$1M (Loan roughly 450K, Grant roughly 440K, & approximately 100K in kind from MCF) and we’ve spent about $\frac{3}{4}$ of it. Jen noted that $\frac{3}{4}$ of the funds have been spent but only $\frac{1}{4}$ of residents are served.

Leslie said the project budget was prepared before COVID (and the resulting inflation) and now we know that costs of materials and labor increased 30-40% from when the project started.

Karrie Sweet asked what items were we talking about specifically as she thought all of the fiber was purchased early on. Leslie said it wasn’t just an increase in materials but labor as well.

Leslie and Brian said that some contractors purchase non-fiber items themselves and we pay for those items at the same time as their labor.

Karrie said the fiber is hung on poles right by her house, but they are not lit so she can't get hooked up. She asked when it will be lit as she may go to another provider if it won't be soon. She also asked how many people in Town were currently lit. Jon said that MCF stopped a lot of their work due to NBRC putting a hold on reimbursing invoices and MCF is using their own money to supplement in the meantime. Leslie said there are no residents lit as of yet. She explained that building a network is a multi-step process: 1) hang strand 2) hang fiber optic cable to steel, 3) cable gets spliced to NOC (at building by Town Office) 4) hang boxes to distribute signal to houses.

Karrie asked if signing up on MCF's website (to be put on a waiting list) will get service to her any faster. Leslie said doing so will help MCF organize interested customers. Signing up is not a commitment, just shows an interest.

Scott Stortz asked about the Town providing funds to the project through a loan. Jon explained that tax dollars cannot be used for broadband so there is an agreement in place with MCF for the project revenue to pay back the loan. Rich said the loan is in Town's name, so our credit will take a hit if we fail to pay it back.

Scott Stortz asked if the hold-up with NBRC was the only issue. Jon said no, as the cost increases now mean the entire Town may not be done with the funds we currently have remaining.

Tara Sweet asked about residents on River Rd whose addresses were not identified as being part of the project. Brian said his maps indicated those were Cambridge addresses. Aimee asked which maps MCF was using as the e911 Map would show these ARE Fletcher addresses. Brian will meet with Aimee to seek out discrepancies between the maps.

Rich asked when we needed to start paying back the loan. Jon and Leslie said June of 2024.

Leslie wanted to clarify that work is going on in Fletcher. She said the status update map shown earlier in the meeting is current. Karrie said this is NOT the map that MCF has up on their website. Leslie agreed and Jon said we will put the updated map on the Fletcher town website tomorrow.

Matt S asked what other towns are currently served by MCF. Brian said portions of: Fairfax, Underhill, Cambridge, Waterville, and Belvidere.

Jon reached out to the Town attorney regarding looking into the Broadband project as suggested by Michelle in her document to the Board. The Town attorney said this was not his area of expertise, but he gave Jon three leads on other firms. Jon reached out to one of them, asking if they would be interested in at least learning as much as Michelle (read over contracts, grant info, loan info, emails, etc.) and provide guidance on a path forward. This attorney said yes, but the cost would potentially be in the \$9,000-\$13,500 range.

The Board would need to provide a scope of work to this attorney. Jon asked the Board members their thoughts. Rich feels it would be worth it, especially since there are NO customers as of yet. Matt S feels this money would be spent only on digesting info and showing path forward - not necessarily an opinion on what we SHOULD do, but what we can do. Matt G feels it's unnecessary and is too much money for what we may get out of spending it.

Scott Frennier asked if we could get someone from the Public Service Board, the telecommunications board, or other state agency to give us an opinion for less money. Matt S said the Board is trying to look out for greater good of Fletcher and this was a forward-looking project at the time it was conceived. He said it's a very complex situation, especially with the

pandemic affecting costs and increasing the public's awareness/need for broadband. He feels MCF is altruistic in their mission, and though there have been missteps along the way, their intentions are good. The Board's goal now is to reach as much of the town as possible with what money we have available. If we default, the Town will likely suffer a credit hit, but that is just the reality of the situation.

Scott Frennier said that Michelle was trying to protect the Town and make certain that if MCF made mistakes, it's not the Town's fault and therefore should not affect our credit rating. The sole goal is protecting the Town's credibility for any loan need in the future.

Tara Sweet suggested reaching out to Mary Kay Raymond (a Fairfax resident whose background is in utilities and broadband) as she may be helpful in providing an opinion which would not cost so much money. Jon will reach out to her.

Bruce said this is not just a fiber issue, so having a legal perspective would be helpful. He feels the Board needs to know where we stand regarding NBRC's pause of project funding. All other parties involved have sought legal counsel so we should as well.

Jon said we did have an attorney involved at the very beginning of this process, but he has since passed away. He could see if another attorney at that firm would be able to work with us or if they could suggest another firm for us to contact.

Raymond Collins asked if we could use unspent project funds for the attorney. Jon said no, as those funds are restricted to the budget as presented at time of project's inception. Rich asked if we could use ARPA funds. Jon said yes, but then we would not be able to spend it on other things like a new truck.

Scott Stortz said the original goal was to reach all residents but that's now in jeopardy as discussed tonight. He feels any money spent on getting moving towards all of town being served would be worth it.

Rich asked about the potential timeline for this attorney to read through everything and have a plan forward. Jon wasn't exactly sure, as there are a lot of documents and emails to go through, but perhaps a month.

Jon said all the Board members should come up with Q's they would like answered by an outside person, whomever they may be. What is our goal? What are our concerns?

Rich said that Michelle had asked that her document to the Board be included as part of this meeting. Aimee will attach it to these minutes as correspondence.

Jon thanked everyone for their engagement and attending the meeting this evening.

03 Mack

Rich said there is a potential buyer who would use it for parts. Rich is working with them and will update the board at the next meeting.

Meunier Property

Cory Getty said he has started a countdown on Lee living in his camper onsite. However, since the limit is 180 days that would be run out sometime in January and Vermont law prohibits evictions in the middle of winter. At that time, the Town could issue a Notice of Zoning Violation but not much else. He is concerned about where the waste is going due to lack of septic system.

Bruce said that NRPC cannot give a clean-up grant to a private entity and the Town cannot use these grants to help a private entity – that's only for Town land so we are somewhat stuck.

Even if we owned the land, the grant process would be competitive and there's no guarantee we would receive funding.

Road Report

A beaver dam let go last week and partially washed out a section of North Road. It was mostly debris on the roadway which was easily cleaned up. Jon said perhaps the road crew could contact neighboring landowners to tear apart a portion of beaver dam once a month or so to prevent future problems.

The new one-ton is at Iroquois, getting its dump body installed. It should be ready within the next week or so.

The grader has been fixed and was brought back to the garage last Friday, so it is now back in service. Matt G will be speaking to reps at John Deere to see what they might be able to do for us regarding covering some repair costs. Fairfax and Cambridge have been helping us with grading while ours was out of commission. Matt G will need to speak to them about what we may need to pay them/reciprocate.

The new gas tank has been installed at the Town Garage.

Town Office Building Update

Rich shared that he completed the pressure washing of the building. He noted some areas where the freeze board and siding need fixing. The trim over the heat pump pipes also needs repair. The Board approves Rich completing these tasks.

Rich reached out to Brenda and she will be painting the decorative wooden fans above the doors. Matt S. also noted that the bench out front needs refinishing. Rich may ask Brenda to do this as well or perhaps it could be offered to a teen for Community Service hours.

The generator has been serviced, though we need to do something about grass mowing as the grass is being blown into the generator vents. Rich will speak with Brenda about this. Reliant will get us a quote for a generator at the Town Garage. Jon wants to make sure we don't over-spec for what we need.

3) Adjournment

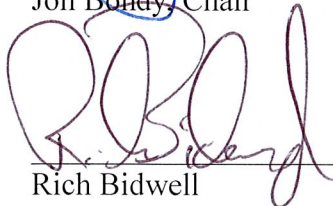
The meeting was adjourned at 9:30pm.



Jon Bondy, Chair




Matt Gillilan



Rich Bidwell

Matt Swartz



Bruce Douglas

Michelle Frennier

Town of Fletcher Resident

Broadband Project Review

25 August 2023

RE: Follow up to 8/21/23 Select Board Meeting

Project Review - Fletcher, VT Broadband

As a lifelong resident of Fletcher, I am providing my review and findings related to the current hold status of the Mansfield Community Fiber (MCF) Town of Fletcher Broadband project.

Northern Border Regional Commission Grant Status: Funds On Hold - Out of Scope Work

Town/MCF Summary of Out of Scope Spend By Fund Source:

\$36,909.76	NBRC (Grant)
\$127,023.79	VEDA (Bond/Loan)
\$163,933.56	Total Out-of-scope Spend

NBRC Hold Basis: Several Out-of-scope infrastructure segments where construction was initiated and vendor invoices/project invoices were paid out-of-scope expenses in the amount of \$163,933. “NBRC will not be releasing the hold on the remaining grant funds until such time as the identified out-of-scope matter has been both determined and rectified to NBRC’s satisfaction.”

Aggravating Factors: The issue of ownership of existing out-of-scope infrastructure remains unresolved. Pole attachment licenses, which are issued upon payment for and completion of make-ready work, must be owned by operating utilities that hold a Vermont Certificate of Public Good. Mansfield holds a Vermont CPG while Fletcher does not by design. Reinfusion of the out-of-scope MCF funds, together with remaining available project funds (NBRC and VEDA) are not sufficient to complete Fletcher 1, which is only the initial segment of the project. Fletcher 2 is no longer in scope based on the lack of available funding and rising costs. MCF engaged their attorney and provided an opinion letter that the Town does not have the authority to make them stop working as instructed by NBRC. Their attorney notes only the MOU and Lease Agreement as binding agreements. We've agreed to a 99 year lease for \$1 per year. My understanding is that reimbursements were stopped and that we "may" not be able to request reimbursement for any work past that pause date, not that all work must stop.

VEDA Loan (Approved by Bond): Terms & Conditions Review

Loan Agreement Obligating MCF: "As an inducement for said loan from Lender to Borrower, MCF has agreed to guarantee the loan and to become a party to this Loan Agreement and abide by the provision and covenants herein."

Terms & Conditions - Failures: Marked according to enumeration in the Loan Agreement

2. Loan Proceeds - The proceeds of the loan shall be used for the expansion of a fiber-to-the-premises network, adding approximately 34 miles in Fletcher, VT as part of a \$1,001,461 project.

4. Disbursement - During construction period as work is completed and provided that the Borrower is in full compliance with the Terms of Loan Agreement and all other Loan documents executed in connection therewith.

7. (a) Books & Records - Must keep books and records of business operations and act in a business-like manner acceptable to the Lender.

15. Borrower Restrictions: Borrower shall obtain prior written permission from Lender regarding any Material Departure (e.g., a change which materially affects the conditions of the loan or deviates from the terms) from the business plan accompanying the Borrowers application for the loan.

Events of Default: Marked according to enumeration in the Loan Agreement

17. (b) Failure to comply with any of the other terms, covenants, conditions of this Loan Agreement, the Note, or any Mortgage or Security Agreement or any other agreement given by Borrower to Lender (e.g. Terms & Conditions #2, #4, #7, #15 as enumerated above)

(d) A Material adverse change in Borrower's financial condition, business outlook or value of its assets which may impair payment of the Loan.

Aggravating Factors: The lion's share of the misappropriated funds are from the VEDA /Bond loan which has strong contractual obligations. The Lender has the right to Remedies, Acceleration, & Attorney Fees in connection with Events of Default as outlined above, up to and including the option to declare all of the obligations of the Note be immediately due and payable. These Remedies reference unremedied defaults exceeding 20 days from mailed notification by

the Lender. The defaults identified have been known by the Town since January 2023, 7 months have past and NBRC has halted our grant funding as a result. The following statement source 'Broadband For Town Meeting Update':

“When all of this came to light in late January, it was clear that there was not enough funding to finish the project with the 9.8 miles included. Parts of the 9.8 miles are already partly implemented, at a rough cost of \$80K. MCF then offered to “buy back” the infrastructure outside of Fletcher, reimbursing the Town for those expenses, allowing that money to be applied to the main project. The VEDA loan and NBRC grant are legal contracts, and one aspect of this is that once the original project scope and budget are agreed upon, the scope and budget cannot change without re-negotiating the agreement. This even means that Fletcher cannot contribute ARPA money to “fix” the project without first creating a new budget and getting it approved by NBRC and VEDA. It also means that MCF cannot “buy back” the \$80K of outside-of-Fletcher expenses without re-negotiating the budget.”

My initial questions were: Has the Town engaged with our attorney regarding the contractual defaults to the VEDA Loan Agreement? If so, has VEDA been notified of the defaults and engaged to determine any necessary remedies? If the Town is found to be in default of the Loan Agreement, we are obligated to reimburse VEDA for their attorney fees related to resolution. I've met with both the select board chair Jon, and member Bruce to discuss this topic. Jon advised that we have not consulted a lawyer regarding failure to follow the Terms & Conditions of the Loan, and we have notified VEDA through cc to the email correspondence with NBRC but have not directly discussed the conditions of the loan.

Town of Fletcher & MCF MOU Review- Enumerated to match MOU sections

(2) “New Build construction costs will be funded in part by: (a) the proceeds of grants-in-aid awarded to the Town, (b) the proceeds of a loan made to the Town by the Vermont Economic Development Authority ("VEDA"), and (c) a capital contribution of in-kind services by MCF and/or funded by MCF in an amount not to exceed ten percent (10%) of the total project cost based upon the proforma statement attached as Exhibit A. The Town will provide the awards from grants-in-aid and the VEDA loan proceeds to MCF to fund the costs of constructing the New Build and such New Build project funds will be held in a third-party escrow account to be requisitioned by MCF against warrants approved by VEDA or Northern Borders Regional Commission ("NRBC").”

Aggravating Factors: The MOU agreement as written, provides MCF with a 99 year lease agreement regardless of funding and without language and conditions that compels them to satisfy their responsibilities outlined in the VEDA Loan Agreement as a party to the Loan and provider of Security. The only statement that comes close, is underlined above and states that they will: Requisition monies against warrants approved by VEDA and NBRC. Allowing MCF as a private company to benefit from the MOU and Lease Agreement without these conditions creates unnecessary risk and potential harm to the Town’s loan worthiness. Simply said, the MOU does not protect the Town from MCFs actions (e.g., Out-of-Scope build) which has jeopardized the project funding and may prevent the Town from fulfilling their obligation to fund the project build as outlined in the MOU.

CONCLUSION

Due to the protracted amount of time that has passed since we discovered the misappropriation of both NBRC Grant and VEDA Loan funds by MCF and the potential ramifications related to a potential default on our Loan Agreement, it is imperative that we take immediate action to protect the Town's interests and loan worthiness. I recommend that the Town engage with our attorney and that we exercise any and all opportunity to remove ourselves from the MOU and Lease Agreement made with MCF based on their disregard for their obligations to VEDA as outlined and agreed upon in the Loan Agreement. Based on my review of the provided documents, there is a high likelihood that this project, even refunded by MCF for the out of scope work, will not be adequately completed, nor will we see the revenues expected to fund the payback of the loan. The expansion of unlit wire to regions scattered throughout town and beyond gives the impression that MCF is focused on securing/laying claim to the poles and not focusing on getting sections of the infrastructure lit and generating revenue, to date there are no Fletcher households hooked up to MCF in the "New Build". It was mentioned that Consolidated may be blocking our ability to get additional funding since they were awarded FCC rural development funds to expand in our area as well. It is my opinion that Fletcher is the unfortunate bystander to a utility war and our best interests are not a priority for MCF. Had MCF not deviated from the agreed project scope, we would not be in this situation. It is time that we recognize that MCF is a service provider and private company with their own agenda and interests in mind.

Impact of our Loan (Bond funds) defaults in simple terms:

-Total Principal Loan Amount: \$480,200

Total Misappropriated Loan Funds: \$127,023.79 = **26.45% of the Loan used Out-of-Scope**

Summary of Concerns:

-NBRC - Current grant agreement expires 9/30/2023, “NBRC will not be releasing the hold on the remaining grant funds until such time as the identified out-of-scope matter has been both determined and rectified to NBRC’s satisfaction.”

-VEDA/Bond Loan - MCF’s use of funds for Out of Scope work is in violation of the Terms & Conditions of the Loan Agreement (Bond funds) in risk Events of Default: Use of Loan Proceeds, Noncompliant Disbursements, Inadequate Books & Records, and Material Departure without written authorization (e.g., a change which materially affects the conditions of the loan or deviates from the business plan provided with our Loan application).

- Ownership of existing out-of-scope infrastructure remains unresolved. Both NBRC and VEDA have vested interest in the materials and infrastructure that was built out with misappropriated funds (Work outside of Fletcher). These items may not be sold, or transferred without permission from NBRC and VEDA as they were paid for with Federal and Loan protected funds.

- Current Status of the Fletcher Broadband project covered by the Bond vote - All infrastructure is unlit and there are zero customers connected to the infrastructure and therefore there is \$0 of revenue being generated to pay back the loan.

-The Memorandum of Understanding (MOU) (e.g., agreement between MCF and the Town used to back the Loan and Grants) does not protect the Town from MCFs actions (e.g., Out-of-Scope

build) which has jeopardized the project funding and may prevent the Town from fulfilling their obligation to fund the project build as outlined in the MOU.

-Our Loan Worthiness is in question for future Town and School needs should this project fail and the Loan is defaulted. VEDA (Loan holder) is protected by MCF's unconditional agreement to pay back the loan, but that does not protect the Town's credit and ability to obtain future funding.

Questions for the Select Board:

1. Who else can help us evaluate our reality and confirm where we are at and what we are capable of making for decisions based on current state?
2. What is our specific path/plan to move us forward with the goal of providing Fletcher with Broadband? What is needed to make it executable?
3. What are the hard decisions/actions that we must take to make it work?
4. What are our non-negotiable standards going forward? What are we tolerating today that is sabotaging our success for this project?
5. How do we build in the accountability required for these standards to be maintained and our outcome attainable?
6. What opportunities should we consider that weren't in our original plan?

Documents Reviewed or Referenced

- The MOU between Fletcher and MCF
- The current Broadband spreadsheet
- The Broadband Map
- Email Correspondence dated March 13th between Selectboard Chair, Town Clerks, NBRC and VEDA regarding funds hold and ownership of materials
- Our explanation of the Spreadsheet to NBRC in our Cover Letter
- The 8 questions NBRC asked recently and noted in the SB minutes from Aug 2023 Mtg
- Our responses to the 8 NBRC questions
- The MCF Will Pay \$163K Letter provided to NBRC
- The legal opinion that MCF obtained regarding the "stop work" order
- VEDA Fully Executed Loan Documents
- NBRC and Town of Fletcher Grant Agreement