
Re: Relationship of the remaining two municipalities to each other.

From Thomas A. Murphy <tmurphy@vomny.org>

Date Fri 9/15/2023 4:23 PM

To Eney, Jaine Elkind <Supervisor@townofmamaroneckny.org>

Cc Mayor and Board <MayorandBoard@vomny.org>; Robert Spolzino <rspolzino@abramslaw.com>; Katz, Abby <AKatz@townofmamaroneckny.org>; Yogman, Tracy <TYogman@townofmamaroneckny.org>; Matt Sullivan <msullivan@lmcmedia.org>; Meredith Robson <MRobson@townofmamaroneckny.org>; Maker Jr., William <WMakerJr@townofmamaroneckny.org>

The Town in my opinion is unilaterally dissolving the Board of Control without a firm legal basis or from what I have seen a written opinion of your attorney.

I can't force you to stay in the agreement without litigation and I don't think that would be a good use of our taxpayers, especially our shared taxpayer's and constituents. (But that will ultimately be a decision of my Board.) I am gravely saddened and disappointed that another joint services agreement with the Town is now being abandoned.

Hope you all enjoy the weekend.

Respectfully,

Tom Murphy

Mayor, Village of Mamaroneck

He/His/Him

On Sep 15, 2023, at 4:01 PM, Eney, Jaine Elkind <Supervisor@townofmamaroneckny.org> wrote:

Dear Tom,

The Town disagrees with your view that the CATV agreement remains in effect. By their terms, both franchise agreements have expired, meaning that the CATV agreement has expired (see section 11 of the CATV agreement).

The actions of the cable companies do not support an argument to the contrary as your September 11 email seems to imply.

The cable companies continue to pay a franchise fee, but not PEG money. We believe this is because the cable companies recognize that whether or not a franchise agreement is in place,

they cannot continue to broadcast without paying a franchise fee.

In fact, Altice has begun paying a franchise fee directly to your Village. This is a conclusive indication that Altice agrees with the Town that the CATV agreement has terminated.

There is an argument supporting the cable companies' decision not to pay any PEG money. Payment to support public, educational and governmental programming is a negotiated item of a franchise agreement. Without such an obligation contained in an extant franchise agreement, the cable companies have no compulsion to pay PEG money. The cable companies are awaiting the negotiation of new franchise agreements that contain an obligation to pay PEG money.

The fact that the cable companies are not paying PEG money is a further indication that like the Town, the cable companies understand that the franchise agreements have expired and therefore as stated above, the CATV agreement has expired.

By next week, the Town Comptroller will send the Village its full share of the PEG money. The Town Comptroller is not in possession of any franchise fees belonging to the Village, which she will explain in a subsequent communication.

The Town Comptroller will release to the Town the Town's share of both the franchise fees and PEG money. Pursuant to the September 6th resolution of the Town Board, a portion of the Town's PEG money will be used by the Town to finance its share of the construction of a television studio on Mamaroneck Avenue and the purchase of related equipment. The Town will not be paying the Village's share of the cost of said construction and purchase of related equipment.

Jaine

Jaine Elkind Eney
Supervisor
Town of Mamaroneck
740 West Boston Post Road
Mamaroneck, NY 10543
(914) 381-7805
supervisor@townofmamaroneckny.org

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From: Thomas A. Murphy <tmurphy@vomny.org>
Sent: Monday, September 11, 2023 7:17 PM
To: Eney, Jaine Elkind <Supervisor@TownofMamaroneckNY.org>
Cc: Mayor and Board <MayorandBoard@vomny.org>; Robert Spolzino <rspolzino@abramslaw.com>; Katz, Abby <AKatz@townofmamaroneckny.org>; Yogman, Tracy <TYogman@townofmamaroneckny.org>; Matt Sullivan <msullivan@lmcmmedia.org>; Meredith Robson <MRobson@TownofMamaroneckNY.org>; Maker Jr., William <WMakerJr@TownofMamaroneckNY.org>
Subject: Re: Relationship of the remaining two municipalities to each other.

Dear Jaine,

Thank you for your email on Friday. I appreciate your response, but I don't agree with your

analysis, neither does the Village Attorney. The CATV agreements are still in effect and the payments are still coming into Tracy. That has to mean that the BOC agreement continues to govern how that money is handled until the agreement is terminated in accordance with its terms on one year's notice from the anniversary date.

Nevertheless, as I have previously told you, the Village Board of Trustees has agreed to use a portion of its PEG money for LMC's project. You therefore have my consent as a member of the BOC.

Respectfully,

Tom Murphy

Mayor, Village of Mamaroneck

He/His/Him

On Sep 8, 2023, at 3:50 PM, Eney, Jaine Elkind
<Supervisor@townofmamaroneckny.org> wrote:

Dear Tom,

I respond to your email dated September 7, 2023, in which you fail to acknowledge the express provisions of the CATV agreement (Agreement). Section 11 of the Agreement provides that the Agreement expires upon the expiration of the franchise agreements. Both franchise agreements have expired. Since the Agreement no longer exists, there is no Board of Control. An additional argument for this result lies in section 12 of the Agreement which provides: "Any municipality may rescind this contract on any anniversary date of this contract upon one year's notice." Thus, Larchmont's withdrawal caused the Agreement to be rescinded as of the effective date of its withdrawal.

Accordingly, there is no existing Board of Control to meet on September 14th, or any other day.

But even under the Agreement, the franchise fees and PEG money must be paid directly to each municipality and not be under the control of, or retained by, the Board of Control. Section 3 of the Agreement, under the definition of Comptroller, provides that any and all sums due to any of the parties pursuant to the franchise agreements should be paid to the Town Comptroller (as Comptroller of the Board of Control), and that upon receipt, the Town Comptroller should distribute all sums received to the municipalities in their distributive shares. The Agreement does not empower the Board of Control to dictate what each municipality does with its share of the franchise fees and PEG money, or retain them.

I have made these points repeatedly in email correspondence since earlier this year.

The Town Board recently approved the use of a portion of its PEG money for the construction of a television studio on Mamaroneck Avenue and the purchase of related equipment. We understand that Larchmont has done likewise. That

leaves it up to the Village of Mamaroneck to decide whether to contribute a share of its PEG money to make this project a reality. I am certain that LMC anxiously awaits the Village's decision. It would be unfortunate if the bids for the project expire while LMC awaits the Village's action and replacement bids come in higher, causing LMC additional, needless expense.

Jaine

Jaine Elkind Eney
Supervisor
Town of Mamaroneck
740 West Boston Post Road
Mamaroneck, NY 10543
(914) 381-7805
supervisor@townofmamaroneckny.org

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From: Thomas A. Murphy <tmurphy@vomny.org>
Sent: Thursday, September 07, 2023 4:46 PM
To: Eney, Jaine Elkind <JElkindEney@TownofMamaroneckNY.org>
Cc: Mayor and Board <MayorandBoard@vomny.org>; Robert Spolzino <rspolzino@abramslaw.com>; Katz, Abby <AKatz@townofmamaroneckny.org>; Yogman, Tracy <TYogman@townofmamaroneckny.org>; Matt Sullivan <msullivan@lmcmedia.org>
Subject: Relationship of the remaining two municipalities to each other.

Dear All,

I asked Mr. Spolzino to opine on the current state of the Board of Control and his opinion is below.

If the Town wants to leave the agreement the date to do that is approaching in November. If not we on the Village strongly feel that the agreement is still in force.

If the Town wishes to renegotiate the agreement that's fine. I once again renew my call to have both Boards meet and we can all share our ideas and dreams for the future success of public access in Mamaroneck!

I regards to the project funding for the Playhouse I would be open to meeting as a Board of Control to vote to allocate the funds for this important project.

Respectfully,

Tom Murphy

Mayor, Village of Mamaroneck

He/His/Him