

CLPOA FAQ

Statement - Why am I hearing that the CLPOA did not get “approval” from their attorney to move forward with this vote or that the CLPOA BoT is split on this decision to present?

Response - The CLPOA has engaged their attorneys throughout the process, including asking them to review the procedure to move forward with presenting the topic to the property owners during this next meeting. The CLPOA BoT attorney was invited to attend the meeting with property owners, to speak to the fact that this action is one that can take place. The attorney is not going to answer whether or not we should or have to, that is not the role of this attorney. Their role is to review the action, documents, and make a determination on whether the association can take such action.

The CUI Board of Directors spent more than \$20,000 to engage attorneys and accountants that specialize in this type of transaction and conversion, all of the information from all involved parties has been compiled, posted, and are available to all property owners to review for a vote.

The CUI and CLPOA all serve the same community, you, the property owner/members of Choctaw Lake. The CLPOA Board of Trustees has a fiduciary responsibility to the property owners and as such, made a motion to memorialize the consensus from the CLPOA and CUI to move forward with CUI reviewing options to convert to Not For Profit during the March 2021 Board meeting after several years of discussions. The CU Board bore the costs of utility specialist attorneys as well as an accounting review of any tax consequences that would occur as a result of taking this action. The CLPOA BoT agreed that this joint effort made sense for the entire community, including the savings to the property owners by joining efforts. All current Board members were in attendance for that meeting, a roll call vote took place and 100% of the CLPOA BoT voted in favor of asking the CUI to move forward to determine a Course of Action, including engagement of specialized attorneys and accountants to help the CLPOA and CUI make a decision. Here is a copy of the exact language from the CLPOA minutes that was stated prior to the vote:

“Marty Ditello reviewed, from the last meeting, the consensus of this board to move forward in partnership with Choctaw Utilities in a productive and professional manner. We also agreed to give Choctaw Utilities time to speak at each CLPOA BoT meeting, and Choctaw Utilities would provide us with an update on the Choctaw Utilities financials. Marty indicated that he wanted this board to memorialize the commitment that this board stands behind and supports Choctaw Utilities in their efforts to create new by-laws, switching to a not-for-profit entity if it makes financial sense for the community, ultimately reducing costs. **Motion 21-021** was made and passed 9-0.”

Statement - Why are you bringing this to the Property Owners for a vote and not just making the decision as CLPOA BoT members?

Response - While this vote can be taken by the current CLPOA Board of Trustees, we believe that it is important to ensure that the voice of the majority of the Choctaw Lake Property Owners is represented with this decision by a vote at the property owners meeting.

Statement - Why is the CLPOA Board of Trustees not responding as Board members to social media posts on Facebook and NextDoor, we want to hear from them on those platforms?

Response - Board of Trustee members for the CLPOA make their actions known through regularly scheduled board meetings, and special meetings as needed. While we touch on this a little later, we wanted to address this for the community as a whole. Since the CLPOA has voted to not only partner with the CUI Board of Directors on this endeavor (see above motion 21-021), which was unanimously approved by all nine board members, they also voted to present this to the property owners for a final vote during the last regular meeting. At this point, we believe that the intention of the CLPOA Board of Trustees has been shared with the community through our votes and actions in public meetings, which are documented and posted for the community to see.

Statement - I would like to see more transparency from the CLPOA Board of Trustees.

Response - All action taken by the current CLPOA Board of Trustees has been done during regularly scheduled meetings, where a quorum of Trustees is present. This allowed the Trustees to engage in face-to-face discussion and arrive at decisions after debate, argument, or conversation. This also allowed for any and all Property Owners to attend the meeting, to observe the conversation and transparency that took place.

The Board of Trustees may vote electronically from time to time, but the decision must be unanimous and the content, direction, and vote has to be discussed at the next regularly scheduled meeting. These electronic votes are noted as such in the meeting minutes, and approved during the next available meeting.

Statement - I would like to see more transparency from the CUI Board of Trustees.

Response - All action taken by the current CUI Board of Directors has been done during regularly scheduled meetings, where a quorum of Directors are present. This allowed the Directors to engage in face-to-face discussion and arrive at decisions after debate, argument, or conversation. This also allowed for any and all Property Owners to attend the meeting, to observe the conversation and transparency that took place.

The Board of Directors may vote electronically from time to time, but the decision must be unanimous and the content, direction, and vote must be discussed at the next regularly scheduled meeting. These electronic votes are noted as such in the meeting minutes, and approved during the next available meeting.

Question - Can we see a side by side comparison of the CUI conversion, versus staying status quo?

Response - The move to NFP is basic in its premise, it eliminates Personal Property and Real Estate Taxes and Gross/Excise Receipt taxes. Currently the savings are estimated at approximately \$70K annually.

Ohio Taxes as a For Profit	
Personal Property	\$34,000.00
Real Estate Tax	\$12,000.00
Gross Receipts	\$24,000.00

Ohio Taxes as a Non Profit	
Personal Property	0
Real Estate Tax	0
Gross Receipts	0

Question - Has anyone reached out to the Attorney General's office to see if there is any sort of conflict of interest with this vote?

Response - After numerous conversations with the CLPOA and CUI attorney of record, there has been no mention or need to consult the Attorney General's office with regard to a conflict of interest.

The actions presented to date, including the proposed CUI change to a Not For Profit has been in progress for almost 5 consecutive years, with numerous legal and financial experts.

Further, here are some statement from the Ethics Commision of the State of Ohio;

Having a conflict of interest is not illegal. In fact, conflicts are normal because public servants have families and friends, and may have businesses, professions, investments, property interests, and other connections to their communities. Any of these connections could result in a conflict of interest for the official. The issue is how the public servant responds to his or her conflict of interest.

Simply put, a public official has a "conflict of interest" when his or her ability to be an objective decision-maker is impaired by his or her own interests, or the interests of family members or business associates.

Here are just a few examples of potential conflicts of interest in public service:

- A state employee who works as an inspector for the Ohio Department of Job and Family Services conducts an inspection on behalf of her agency at the day care center that is owned by her sister.
- A county prosecutor's office employee investigates someone on behalf of the prosecutor's office. Unfortunately, the "someone" being investigated is also the person who employs the county employee part-time in his private life.
- A city employee who oversees public contracts for the city government is monitoring landscaping work being conducted at a city park. The city employee also works for the landscaping company on weekends.
- At a board meeting, a state board member discusses and votes on a matter that impacts a client of his firm.
- A public employee applies for a job with the company she regulates on behalf of her public agency.

Please note that having a conflict of interest is not illegal. It is how the public official or employees respond to the conflict that would determine whether or not a violation has occurred.

A conflict of interest is the responsibility of the individual who may be in a conflict to report, and exclude themselves from the conversation and any potential official action of the Board of Trustees.

Finally, this decision is in the hands of the property owners, not any specific company or family.

Question - What is the difference between “member” and “owner” under the current CUI formation, versus the proposed Not For Profit formation?

Response - Under the current structure, homes using Choctaw Utilities water are only customers. The new structure makes customers “Members.” Members are formally defined in Article 3 of the Code of Regulations.

Choctaw Utilities directors are currently appointed by CLPOA Board of Trustees. The new documents require Choctaw Utilities directors be democratically elected by member-patrons, which removes the total power from a majority vote of the CLPOA Board members, and places the full power back to the community to vote annually.

Choctaw Utilities is currently organized as a “For Profit” company. This would allow any rate structure to be decided by the board of directors. The “Non-Profit” model would require the company, by law, to operate at cost – neither at a loss nor at a profit.

Much of the new documents mirror current CU and CLPOA rules and regulations, and follow the Articles of Incorporation and Restrictive Covenants.

The new documents provide cost savings to member-patrons of approximately \$70,000 annually in property and real estate taxes.

Question - Can the CUI Board of Trustees enter my house if they want?

Response - The CUI Board of Trustees cannot just enter your home if they decide. If you are having an issue with your CUI water, they may seek approval from you to enter your home, but that permission is not required and to date, has not been something the CUI has needed to do with any CLPOA Property Owner. However, every public water system in the state of Ohio has a requirement to have access to a service location to ensure conditions such as Cross Connection do not exist. This requirement is not unique or specific to CU, and this requirement can be found in state law at: <https://casetext.com/regulation/ohio-administrative-code/title-3745-ohio-environmental-protection-agency/chapter-3745-95-backflow-prevention-and-cross-connection-control/section-3745-95-03-surveys-and-investigations>

Question - What attorney letters, or financial advisor documents can you share?

Response – Information that becomes available will be provided at the following link:
<https://choctawwater.com/not-for-profit-information-2/>

The specific opinion of counsel is found here: <https://choctawwater.com/wp-content/uploads/2022/04/Albers-Memo-for-NFP-20-Apr-2022.pdf>

Question - Why wouldn't the CLPOA just transfer the CUI under its umbrella of Non Profit status?

A lot of companies work very hard to ensure that they are protecting assets in the event of a future lawsuit or bankruptcy where monetary damages might be awarded. By leaving the water plant under the CUI and the Not For Profit status, we prevent any future lawsuit or bankruptcy of the CLPOA from coming after the water plant as an asset.

Inversely, if the CUI is in a lawsuit or bankruptcy situation in the future, all of the assets owned by the CLPOA would be protected, including but not limited to the lodge, arrow head, patrol boat, patrol cars, salt trucks, maintenance trucks, lawn mowing equipment, etc.

Furthermore, item 3 in Albers opinion elaborates that the tax exemption only applies to nonprofits engaged in water production and distribution. If the utility existed under the CLPOA, the tax exemption would not be possible.

Question - Why won't the current CUI Board of Directors give us access to their financials?

Response - The current CUI Bylaws and organizational documents do not require the CUI to provide financial statements to any property owner. This has been a topic of some property owners in the community, as they see this as the CUI is hiding something.

This could not be further from the truth, the current CLPOA Board of Directors have access to the documents, they are provided monthly, and would have a responsibility to the CLPOA to call out any misdoings or issues.

CU has been audited twice in the last two years, to clean reviews and excellent feedback.

The CUI is proposing as part of the switch to Not For Profit a formal process for records requests, which would mirror that of the CLPOA. In short, moving to Not For Profit allows all current and future property owners access to records of the CUI, eliminating the ability for any Board of Directors to deny requests, the current CUI documents do not.

Question - If the CUI moves to Not For Profit, where does the savings of money go?

Response - All savings realized by the organization must go towards future capital expenditures and repairs, and after those have been satisfied, the remaining funds would be distributed back to the property owners.

Question - If the CUI moves to Not For Profit, will there be more bills and overhead expenses?

Response - There is currently a Service Level Agreement (SLA) that was agreed upon by both the CUI Board of Directors and the CLPOA Board of Trustees to provide support for the business operations of CUI. CLPOA previously provided this service at a charge for decades. In 2017, CU started its own office and cleaned up many things that had been overlooked for years. With CU in great operational shape, and new CLPOA management, CU and CLPOA reentered a relationship in an SLA. The SLA is a five-year agreement with the ability to negotiate changes and extensions.

Question - Are there any provisions in the current Not For Profit documents about how much money or debt that the CUI Board of Trustees can accumulate? Can we force them to get approval by every Property Owner before they accrue debt?

Response –

ARTICLE 6 – OPERATION AT COST

The revenues the Company derives from treatment, distribution, and sale of water during any fiscal year in excess of its operating expenses for such fiscal year after reasonable additions to the Company's capital reserves shall be allocated among the Members in proportion to their patronage transactions during the fiscal year and credited to the capital accounts of the members on the basis of patronage, as provided in the Company's Code of Regulations.

None of the income or assets of the Company shall be used to pay a financial return to investors or distributed in any manner other than on a patronage basis, as described in the Company's Code of Regulations.

It is required that the CUI as a NFP maintain a 5 year plan that incorporates capital reserve to insure the continued operations of the utility. The BoD are required to approve this plan as well as a yearly budget.

Question - Is this just a "power grab", by a certain individual on the CUI Board of Directors?

Response - No. Under the current CUI bylaws and governing documents, any CUI Board of Director member can motion, second, and vote to increase water rates to price property owners out, they could decide to start paying themselves a salary of any amount and the cost would be evenly split among all property owners, among many other things.

The CUI Board of Directors and this specific individual recognize the potential outcomes that could come from how the bylaws and organizational documents are written and they are seeking to prevent this today and forever for the betterment of the entire Choctaw Lake Property Owners Association. The CUI would be forced to operate not for profit, and not at a loss, which would eliminate worries about accruing unlimited debt liability. You would have an annual vote of who represents the CUI asset, by directly participating in a vote of Trustees.

Question - Won't we lose control of our commodity by allowing the CUI to switch to Not For Profit?

Response - As an individual Property Owner, you currently have NO control of the CUI. You have NO access to records. You have NO access to appoint Board of Director Members. You have NO "right" to excess profits that might be saved. You have NO material ownership of the organization. You have NO ability to stop the CUI Board of Directors from accumulating debt. You have NO ability to remove anyone from the CUI Board of Directors. You have NO direct vote of who will run the CUI. Your relationship with CU is as a customer only.

You would gain some control as a Member of the CUI through the change to Not For Profit. You would decide who serves as the Board of Directors for the CUI through the change to Not For Profit. You would have access to records of the CUI through the change to Not For Profit. You would have a "right" to excess profits with the change to CUI Not For Profit, and this right is codified in cooperative law, and the CU Articles of Incorporation.

Question - Won't the CLPOA Board of Trustees lose power and control over the CUI with this move?

Response - The CLPOA Board of Trustees has limited power and control over the CUI under the current bylaws and organizational documents. The powers are limited to setting the CUI Board of Director seats, and who is assigned to those seats. They also have the ability to review the CUI financials, although they are not permitted to disclose them as active or no longer active Board of Trustee members.

Once the CLPOA Board of Trustees set the seat count for the CUI, and assign annual appointments to the Board, they then have no more power or control as any Property Owner.

This change eliminates the CLPOA Board of Trustees from assigning seat count for the CUI and also who would serve the Board. It puts all of that back into the hands of the community. The community will decide who is best to serve the CUI Board based on experience, plans, and their ability to serve the community.

This would move the "power and control" of the CUI from essentially five CLPOA Board of Trustee members, and puts it in the hands of the majority of the community with every annual vote.

Question - If CUI goes not for profit where will the savings be realized from?

Response -

Ohio Taxes as a For Profit	
Personal Property	\$34,000.00
Real Estate Tax	\$12,000.00
Gross/Excise Receipts	\$24,000.00

Question - How will I be a member in good standing if CUI goes not for profit? It is possible to be a member in good standing for CUI but not a member in good standing for CLPOA?

Response - The CUI and CLPOA would and currently operate on different governing documents that define members in good standing. It is possible to be a member in good standing for one but not the other—depends if the property owner/member is paying their water bill, dues, and assessments, etc.

Question - What is the CUI debt ceiling limit?

Response – The CUI currently has in place a 5-year plan asset management plan that includes all income, expenses and investments. This planning document is used to determine water rates, infrastructure needs, etc. This is an EPA requirement to provide for future years planning.

Question - What are the Pros and Cons of CUI going not for profit?

Response –

Pros:

Annual Tax Savings to CUI of \$70K

Asset moves between Balance Sheets – No loss to PO's

Tax Savings goes to CUI Capital Replacement

Increase Savings to replace distribution lines

Savings to water rates

Tax losses can be retained until gains are realized

Develop rate structure to include capital improvement category – sheltered from federal tax

Cons:

Ability to use each company as a tax loss, if even possible.

Question - Do property owners have all the information to make an educated vote?

Response – Documentation to support the move to NFP are continually being updated and provided on the Choctaw Water website: <https://choctawwater.com/not-for-profit-information-2/>

Question - What is the procedure to change the CU documents once it is not for profit?

Response – This is an updated change to the Articles of Incorporation posted on the Choctaw Utilities NFP.

ARTICLE 9 - AMENDMENT OF ARTICLES

The Members of the Company may amend these Articles of Incorporation by an affirmative vote of 75% vote of all current Members in good standing. Notice of any proposal to amend the Articles must contain the text of the proposed amendment.