

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
GOVERNANCE COMMITTEE  
MARCH 15, 2012

The meeting of the Governance Committee of the Northeast Ohio Regional Sewer District began at 11:07 a.m.

I. Roll Call

PRESENT: D. Brown  
J. Bacci  
T. DeGeeter

The Secretary informed the Chairman that a quorum was present.

II. Approval of Minutes

**MOTION** – Mayor Bacci moved and Mayor DeGeeter seconded that the minutes of the September 15, 2011, Governance Committee (“Committee”) meeting be approved. Without objection, the motion carried unanimously.

III. Request for Resolution to adopt proposed amendments to the Board Bylaws **Article 1 – OFFICERS, COMMITTEES, ROLES**, regarding change to composition of Audit Committee. The recommended change is for the Board to appoint one Board member, who would serve as committee chair, and two external committee members. The external committee members would be required to have a business and/or financial background. They would serve two-year terms and be a \$100 stipend for each meeting they attend.

Mr. Brown turned discussion over to Assistant Director of Law, Katarina Waag. Ms. Waag advised that staff recommends for the Committee to consider moving forward with the establishment of the new Audit Committee in accordance with the direction of the Audit Committee, and for the authorization of staff to present all proposed revisions to the Bylaws to the Board at its next regularly scheduled meeting.

Mr. Brown noted that staff presented the proposal to change the composition of the Audit Committee to the Board at a previous meeting. This proposal was then referred to the Governance Committee to conduct its due diligence and make a recommendation to the Board. Mr. Brown suggested that the Committee make a motion for the adoption of the amendments to

Article I and to recognize the due diligence conducted by the Audit Committee with respect to the new structure and policy.

**MOTION** – Mayor DeGeeter moved and Mayor Bacci seconded the motion to adopt the amendments to the Audit Committee structure and recommend the changes be moved to the Board for consideration. Without objection, the motion carried unanimously.

IV. Request for Resolution to adopt proposed revisions to NORTHEAST OHIO REGIONAL SEWER DISTRICT BOARD OF TRUSTEES BYLAWS

Mr. Brown noted that several proposed modifications were made to the Bylaws of the Board. He turned discussion over to Director of Law, Marlene Sundheimer.

Ms. Sundheimer advised that there were three areas of focus which include the adoption of new language in Article 1 with respect to the Audit Committee, which had already taken place; Revisions to Article 10 “Authorization for Settlement and Release Agreements,” which is a new provision, to provide for the authorization of the Executive Director and Director of Law to resolve legal claims and disputes that do not exceed \$25,000 without Board approval; and Article 14 “Contracting and Procurement” which was reorganized, headings added to make the section flow logically, and to bring the language more in line with the authority given to the Board under Ohio Revised Code (ORC) Chapter 6119. Additionally, there was one substantive change made under this section pertaining to contract modifications. The Board will be asked to only modify contracts that have a change in scope or a change in the dollar amount. Staff proposes no longer bringing non-monetary changes, such as changes in the schedule, to the Board for approval.

Executive Director Ciaccia referred to the District’s settlement practices. According to the Bylaws, all legal settlements must come before the Board for consideration, but this has not consistently been the case. Executive Director Ciaccia suggested that the District follow the stipulations under the Bylaws. Therefore, staff has recommended for settlements under the amount of \$25,000 not be required to come before the Board for approval prior to moving forward with the settlement.

Mayor Bacci questioned if the District experiences a large amount of settlements under the amount of \$25,000. Ms. Sundheimer replied that on average the District experiences less than one dozen each year. Most of those are for customer account settlements and smaller damage claims. The majority of the District’s legal claims are workers’ compensation-related or contract disputes which generally exceed \$25,000.

Mayor Bacci inquired if the Board would at a minimum receive a bi-annual or annual report of those claims. Ms. Sundheimer affirmed.

Mayor Bacci questioned if “\$25,000 or less would preempt anyone to think that their settlements above \$25,000 would not be in favor, as \$24,900 would be in favor with the Executive Director?”

Mr. Brown moved discussion to address Mayor Bacci’s concern. Mr. Brown explained that since the Board has fiscal oversight, it would like to ensure the integrity and transparency of the processes.

Ms Sundheimer stated that the District’s past practice was to outsource damage claims, torts and workers’ compensation claims to outside legal counsel, and that settlements were reached with authorization from the former General Counsel. The District has since reviewed its insurance policies and has been using insurance and in-house attorneys to handle claims resolution. Often times, we are faced with making settlement decisions in court, and having to first come back to the Board for settlement authority can prolong the settlement process and become cumbersome. Ms. Sundheimer summarized that the District is attempting to reform its settlement practices by allowing for the settlement of smaller claims, without Board approval, prior to settlement. Staff would then inform the Board of those claims settlements. With respect to settlement of larger claims, staff will continue bring those to the Board prior to reaching a settlement agreement.

Executive Director Ciaccia turned discussion over to Ms. Waag.

Ms. Waag referred to page two, line 34 and she stated that those changes memorialize the previous presentation made regarding the composition of the Audit Committee. The Audit Committee will be comprised of one Board member, who will serve as Chair, and two independent non-board members, who must have a business or financial background. Those independent members will serve a two year term and receive a \$100 stipend per meeting.

Mr. Brown questioned whether the proposed composition to the Audit Committee is consistent with best practices. Ms. Waag replied that based upon the research conducted by the District’s Internal Auditor, it seems to be consistent with current practice.

Deputy Executive Director, F. Michael Bucci, proposed removing the language “receive compensation” and replacing it with “receive a stipend of One Hundred Dollars (\$100.00).”

Mayor Bacci commented that there is a difference between the public sector and the private sector with respect to financial background, and he inquired if the District could specifically require that potential candidates have a public finance background.

Mr. Bucci clarified that the District desires someone with a financial background who is a certified public accountant, a certified auditor or a certified fraud examiner. The District will search for candidates through the Municipal Officers Association and the Internal Auditors Association. A list of recommended candidates will be presented to the Audit Committee Chair for consideration.

Discussion was turned over to Ms. Waag.

Ms. Waag advised that language was added under Section C, "Officers, Committees, Roles," providing the president of the Board with the authority to appoint ad hoc committees as necessary and that each committee will adopt a charter that sets forth the scope and duty of that committee.

Ms. Waag moved discussion to Article X, "Authorization for Settlement and Release Agreements." Ms. Waag referred to line 267 and she stated that those changes memorialize the issues previously discussed by Ms. Sundheimer with respect to settlement and release agreements under \$25,000. The Executive Director and Director of Law shall have the authority to enter into those agreements whereas settlements over \$25,000 are subject to Board authorization by resolution.

Ms. Waag advised that the proposed language with respect to providing staff with the authority to enter into easement acquisitions of up to 110% of fair market value was removed.

Ms. Waag advised that language was inserted requiring the Director of Law to periodically report all settlement and release agreements to the Board without regard to amount.

There were no questions for Ms. Waag regarding the modifications to Article X.

Ms. Waag moved discussion to Article XIV, "Contracting and Procurement," and she advised that a vast majority of those changes included renumbering, titling and movement of sections. Ms. Waag advised that she would provide an overview of the three substantive changes in the aforementioned section.

The first change was updating the types of agreements that the District will enter into to include design-build, acquisition of real estate and interests in real estate. Ms. Waag noted that the change will not expand the types of agreements but is rather updating language that is considered to be outdated.

Ms. Waag referred to Section H "Contract Modifications" on page 20, line 385. The District is requesting the authority to remove "no cost schedule changes" from the scope of modifications that require Board approval. Contract modifications that would require Board approval shall include change in scope and modification to the original contract price.

Ms. Sundheimer deferred to Director of Engineering and Construction, Kellie Rotunno, to elaborate on this topic.

Ms. Rotunno stated that the primary reason for this requested change was for the Bylaws to coincide with the District's recently modified general conditions, which require that schedule

changes be processed through work orders which fall under general allowance authorizations. Ms. Rotunno explained that the intent is to provide the Executive Director with the discretion to approve schedule changes that result in a no cost increase to the original contract amount.

Executive Director Ciaccia stated that staff would appreciate being granted this authority but must use discretion because time extensions can become lengthy.

Mr. Brown agreed and stated that although no costs may be associated with time extensions, they still impact the communities. The Board must remain cognizant of longer time extensions.

Ms. Rotunno suggested that a threshold be established for time extensions per the discretion of the Executive Director.

Mr. Brown suggested that staff establish a reasonable threshold for time extensions on conventional construction projects that may pose impacts to the communities.

Executive Director Ciaccia stated that staff will develop a time based limit or percentage of time that would require Board approval. Executive Director Ciaccia assured that the Board will be notified of all time extensions granted which will be incorporated into the monthly Capital Improvement Plan report.

Mr. Brown turned discussion over to Ms. Waag.

Ms. Waag referred to Section I, "Construction Contract Close-Out," on page 22, line 425. The Bylaws currently require the executive director to provide the Board with a report of contract modifications and change orders and the final total price of those contracts. Ms. Waag explained that the District's current practice is more exhaustive than what is stipulated in the Bylaws. Engineering currently provides the Board with a resolution request providing all relevant information including the MBE, WBE and SBE close out numbers. Staff therefore proposes modifying this section to reflect the District's current practice. The Executive Director will bring a resolution request to the Board requesting project close out including the final numbers and business opportunity statistics.

There were no further questions for Ms. Waag regarding the proposed revisions to the Bylaws.

Mr. Brown suggested that since there were no more substantive changes to review staff should bring the proposed Bylaws to the Board for consideration once the final recommendations are made.

Ms. Sundheimer proposed that staff bring the revised Bylaws to the Board at its next meeting and she inquired if the Committee would prefer for staff to make a full presentation to the Board.

Mr. Brown recommended that the process be open and transparent and that a full presentation may not be necessary so long as the information on the proposed revisions to the Bylaws is disseminated to the Board in advance. Mr. Brown indicated that the Committee will make its recommendation to the Board to adopt the Bylaws with the noted changes at a subsequent meeting.

Ms. Sundheimer summarized that staff will present the Bylaws changes to the Board at the April 5, 2012 Board meeting and then make its recommendation for adoption in May.

Mr. Brown affirmed and he recommended that the Committee conduct its due diligence and provide the Board with ample opportunity to review and comment on the proposed changes to the Bylaws. Mr. Brown suggested that the staff present an overview of the substantive changes to the Board.

Moving discussions to another topic, Executive Director Ciaccia advised that staff is trying to determine whether there is a way to reasonably calculate sewage flow for purposes of appointing a Board member to the flow seat. Executive Director Ciaccia informed Mayor DeGeeter that the trustee representing the flow seat is currently appointed by Mayor Jackson. The population seat is appointed by the Suburban Council of Governments (SCOG) since the suburbs have greater population than Cleveland. The flow seat has historically been held by the City of Cleveland but issues rose as to whether Cleveland technically has greater sewage flow as compared to the suburbs.

Some years ago the flow comparison between Subdistricts 1 and 2 were considered close based on metered water consumption, however, the District examined the governing documents and it was determined that there was no clear definition of "flow" in the Court Order. Executive Director Ciaccia explained that metered water consumption is an improper measurement of sewage flow because there is much sewage and stormwater that enters into the combined systems and reaches the District WWTPs for treatment but never actually goes through the water meters. Executive Director Ciaccia wanted to inform the Committee that the District is working towards a methodology to measure flow should a future challenge arise.

Mr. Brown commented that this was one approach and that another option would be for the SCOG to make three appointments to the Board; the Mayor of Cleveland to make three appointments to the Board; and for the Cuyahoga County Executive to make one appoint to the Board. Mr. Brown stated that there may be a future need to address this matter; however, Mr. O'Malley currently holds the flow seat and was recently appointed to a 5-year term.

Executive Director Ciaccia advised that his intention of bringing this matter before the Committee at this time was to apprise them of the flow seat issue which may surface again in the future.

Mr. Brown stated that although an immediate resolution is unnecessary, the District must conduct its due diligence and have an appropriate response available. Mr. Brown explained that the best measurement of flow is to measure what the District actually treats and that there are many instances where the District treats flow from stormwater and runoff that is not actually measured or billed. Mr. Brown commented that the illicit stormwater discharged into the collection system is an ongoing issue that needs to be rectified.

Mr. Brown commented that he and Mayor Starr have raised concerns over whether the communities were exercising due diligence with respect to the integrity of the local systems as well as maintaining compliance with the community discharge permits. Mr. Brown suggested that the District expend its energy towards conducting outreach with the member communities in order to ensure that each is conducting its due diligence. Mr. Brown indicated that it would be beneficial to the ratepayers if the communities would take appropriate steps towards remedying local sewer problems and therefore the District would not be required to build infrastructure to handle unknown quantities of water.

V. Adjournment

**MOTION** – There being no further business to come before the Committee, Mr. Brown adjourned the Committee at 11:45 a.m.



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Darnell Brown, Chairman  
Governance Committee  
Northeast Ohio Regional Sewer District