

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
GOVERNANCE COMMITTEE
SEPTEMBER 16, 2010

The meeting of the Governance Committee of the Northeast Ohio Regional Sewer District began at 11:15 a.m.

I. Roll Call

PRESENT: D. Brown
D. DePiero
J. Bacci (arrived at 11:48 a.m.)

Mr. Brown stated that the Governance Committee (hereinafter "Committee") must select a Chair due to the departure of former Chair Mayor Longo. Mayor DePiero indicated he would be honored to assume the responsibility, and was selected as Chair.

Mayor DePiero advised that a quorum was present.

II. Approval of Minutes

MOTION – Mr. Brown moved and Mayor DePiero seconded that the minutes of the October 22, 2009 Governance Committee meeting be approved. Without objection, the motion carried unanimously.

III. Bylaws Review

Director of Law, Marlene Sundheimer, stated that the annual Bylaws review had been conducted and she presented the Committee with several recommended changes to the Bylaws.

Staff recommends changing the procurement provision to authorize the Executive Director to allow for contract schedule extensions that do not impact the contract amount. Currently, the Bylaws mandate that all contract modifications including schedule changes and contract price be approved by the Board prior to making those modifications. Since there are many schedule changes that do not impact the contract price or overall scope of the project, it would be more efficient to delegate that limited authority to the Executive Director.

In reference to the time schedule extensions, Executive Director Ciaccia stated that this recommended change is not a material change in the scope or cost; it is simply an extension of the schedule.

Mr. Brown stated that there are valid reasons for extension requests. One of those reasons could include circumstances that are out of the contractor's control, such as an unforeseen condition. He believed that a quarterly report be generated to address modifications such as those under discussion.

Executive Director Ciaccia stated that from an administrative standpoint, it would be more efficient if the time extensions were delegated to the Executive Director. Many District contracts have been brought to the Board for time extensions and Executive Director Ciaccia would like for the contractors to tighten up on their schedules. He suggested creating a Key Performance Indicator (hereinafter "KPI") which can be tracked and incorporated into Kellie Rotunno's, monthly report to the Board.

Staff recommended amending Article, IV "Conduct of Meetings," which currently reads that "the minutes of the previous meetings shall be read, amended as necessary, and approved." The Board's practice has been to approve the minutes and therefore the recommendation was made to remove the wording "shall be read."

A provision in Article V, "Records of Meetings," states that the Secretary is the official custodian of the District's records and that he or she delegates that task to the District's Manager of Records. Part of the Secretary's function is to keep the Records Management Program Policies and Procedures Manual and the retention schedules current.

Mayor DePiero inquired if the Record Commission meetings should be held on a yearly basis to discuss records retention schedules and the destruction of records.

Ms. Sundheimer suggested that the Records Committee, on which the Board president serves as chair, should meet annually; however, the Records Committee has not met since 2008. She recommended holding an annual meeting and that staff will present the Board with an annual report so it can approve any modifications to the policies and procedures Legal may recommend.

Mayor DePiero stated that he wanted to stay in compliance with the State of Ohio record retention laws. Mr. Brown agreed. The Law Department plans presenting the Board with an update on the District's records policies and procedures by the end of the year, and to implement it by mid-2011.

Ms. Sundheimer advised that the Bylaws require Board approval on any and all District policies, procedures and rules and regulations and therefore she wanted to remind the Board that the Small Business Enterprise (hereinafter "SBE") program will be updated and revised. Staff anticipates bringing the revised SBE program to the Board for consideration in January 2011.

Executive Director Ciaccia added that many decisions need to be made regarding transitioning from the current SBE program into the new program.

Ms. Sundheimer moved discussion to Article VIII, "Staff Appointments." The responsibility of settlements is placed onto the Board. Staff recommended that the Director of Law and Executive Director have some authority to make recommendations and negotiate settlements. Those proposed settlements would then be presented to the Board, as opposed to asking the Board for authority ahead of time. Staff proposed that the Director of Law be authorized to adjust, settle, compromise or submit to arbitration at the direction and approval of the Executive Director on settlements with values not exceeding \$500,000.00.

Mayor DePiero inquired if prior to the District settling a matter, staff must first obtain the settlement authority from the Board. Ms. Sundheimer affirmed. Mayor DePiero questioned if staff's proposal was to eliminate this step up to \$500,000.00. Ms. Sundheimer affirmed.

Ms. Sundheimer explained that there are often cases during which settlement discussions arise as the matter nears trial and things can move rather quickly. This recommended change would provide the authority to craft the framework of a settlement. Ms. Sundheimer explained that in the instance wherein the judge would like to settle an issue in court or during a Case Management Conference, Board members should be present in order to authorize the settlement. The court can order the Board members to be present at the hearing.

Ms. Sundheimer summarized that staff is recommending authorization to enter into settlement discussions and agreement and craft a recommended settlement and bring that to the Board for consideration. As the Bylaws are currently written, staff is "stepping outside of its authority by engaging parties in settlement discussions."

Mayor DePiero stated that the concept was right and the Board must ultimately approve all settlements regardless, but he was unsure what the monetary threshold should be.

Mr. Brown stated that this recommended change makes sense procedurally, but should be discussed amongst the Board with its legal counsel present. The Board should be given an opportunity to articulate checks and balances and determine the value added of this proposed process versus the current process. Mayor DePiero agreed.

Ms. Sundheimer noted that the Law Department maintains a list of outstanding cases currently in litigation or claims status and is in the process of organizing a confidential briefing summary of the damages and risks. Ms. Sundheimer suggested instituting regular briefings with the Board and outside counsel so the Board feels comfortable with the settlement authority.

Ms. Sundheimer moved to the next item for discussion and she advised that in accordance with state law, the District currently has a cap of \$25,000 on its procurements. The Law Department

is pursuing changing the law to \$50,000, which would also necessitate a change in the District's Bylaws to give the administration the authority to procure contracts, services and goods without going through the competitive bidding process.

Mayor DePiero inquired if all statutory agencies are pursuing this change. Ms. Sundheimer replied that other entities have advocated on behalf of raising their procurement provisions. The District will join their efforts.

Mayor DePiero stated that he is comfortable with the number authorized by the state, and he suggested incorporating language into the revised Bylaws, for example, "\$25,000 or as otherwise provided by the state." Mr. Brown agreed that the District's procurement provision should be in accordance with state law.

With respect to the recommendation to authorize the Law Director and Executive Director to engage in settlement discussions up to \$500,000.00, Ms. Sundheimer will bring forth a proposal and presentation for the next Committee meeting.

She concluded by asking the Committee provide staff with any recommended changes.

IV. Board Seats

Executive Director Ciaccia stated that the appointing authority for the Board of Trustees seats are prescribed in the Court Order that created the District. Its makeup is as follows: two appointments by the mayor of the City of Cleveland; two appointments by the Suburban Council of Governments (hereinafter "SCOG"); one appointment by the Cuyahoga County Board of Commissioners (hereinafter "Commissioners"); one appointment by the appointing authority in the Subdistrict with the most sewage flow; and one appointment by the appointing authority in the Subdistrict with the greatest population. Much discussion has been held regarding the population seat and the flow seat has been assigned to the City of Cleveland since the amount of flow within the Subdistricts is undetermined since it is not metered.

The Commissioners appoint one Board member. This appointing authority will be in question due to the Cuyahoga County (hereinafter "County") government reform. The new County government will encompass an executive and a council, which will replace the Commissioners. The Court Order will have to be modified since the Commissioners will no longer exist. Mayor DePiero currently holds the seat appointed by the Commissioners and his term expires in March 2012.

Mayor DePiero believed that a committee was meeting to discuss the County boards and commissions and he inquired whether said committee had made any recommendations regarding this matter. Mayor DePiero stated that since the original Court Order gave the "County leaders" appointing authority over one Trustee seat, then the executive shall likely appoint the seat and if

“they are setting up a process by which the County Council has to approve all his appointees, then I’m assuming that’s how we would recommend it.”

Executive Director Ciaccia stated that he was not aware of the committee’s recommendation since neither he nor any staff member has been contacted by the committee

Mayor DePiero suggested that the District consider incorporating language which states “shall be appointed by the county executive” and be in accordance with the rules established by the new county government.

Executive Director Ciaccia advised that the Trustee seat in question is secured until 2012 and therefore we have enough time to discuss that issue. As we continue to develop the stormwater program the Board composition could potentially be impacted since some communities have been complaining of the lack of representation on this Board for those communities situated outside of Cuyahoga County. Executive Director Ciaccia was unsure whether this discussion was a separate issue, but he suggested that the Board may want to take this issue into consideration as well.

Mr. Brown believed that was a separate governance issue since the SCOG operates under a separate set of Bylaws. The SCOG recently changed their Board seats from representing large and small communities to representing communities situated on the east and west of the Cuyahoga River. Mr. Brown stated that if “you are either an eastern suburb or western suburb; you have as much opportunity of being appointed a Board seat.” Mr. Brown advised against the Board getting involved with the SCOG’s Trustee seats and he suggested that the SCOG members make the decision as to which representation should be assigned to those seats.

With respect to the Trustee seat appointed by the Commissioners, Mr. Brown agreed with Mayor DePiero. Since the County is in the process of reviewing its boards and commissions, Mr. Brown suggested bringing the District’s Trustee seat to the County committee’s attention. The County’s decision will ultimately have to be incorporated into the Court Order and we are opening the Court Order for stormwater and all other necessary modifications.

Ms. Sundheimer clarified that the Court Order prescribes that the Commissioners “shall have an appointment to the Board.” She advised that this Board seat could be a potential bargaining point for potential settlement of the stormwater litigation. It is not a decision of the County’s new government to determine whether it makes the appointment; the decision will have to be made by this Board whether they recommend modifying the Court Order. If the Board decides to amend the Court Order to allow the county executive to appoint the Trustee seat, then the District would approach the County to request their consideration in making an appointment to our Board. The Court Order will have to be amended since there will no longer be Commissioners. Ms. Sundheimer suggested making this decision before 2012.

Mayor DePiero stated that Ms. Sundheimer's summary was very helpful and he inquired as to when the Committee should meet again.

Executive Director Ciaccia replied that we need to start thinking about a plan of action. With respect to the stormwater seat issue, Executive Director Ciaccia explained that there are other ways to accomplish it but he wanted to bring this matter into the discussion since it has "been bannered around by some the communities in the SCOG and externally in the news media and through litigation."

Mayor DePiero commented that if the Committee did not make a decision today this would not necessarily preclude the Committee from calling an emergency or special meeting if we approach settlement discussions on the stormwater litigation.

Mr. Brown stated that he believes the County may affirm that it maintains the authority to make an appointment and that the District's ability to recommend a change is in its purview. This may be challenged because the County has had the authority to appoint a seat since the District's inception. Mr. Brown commented that it is an influential position for a governmental organization to have representation on this body and that the County has a vested interest and will likely be concerned about the outcome.

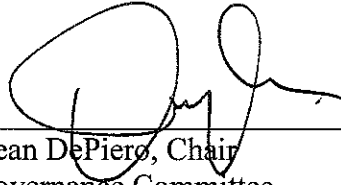
Executive Director Ciaccia stated that the Board could consider distributing the flow seat to the City of Cleveland and the population seat to the SCOG. Both the flow and population seats preclude municipal employees under the Court Order, but that could be addressed.

Ms. Sundheimer stated that the authority to appoint the Board seats was embedded into the Court Order. If the Board wants to change the authority, then a recommendation must be made and we can begin the process of petitioning the Court to amend the Court Order. Since we have opened petitioned the Court to potentially modify our plan of operation should we need to include stormwater, it would be a good opportunity to recommend changes regarding Board seat appointments. All parties can participate and bring their comments forward through the court process. Ms. Sundheimer recommended conducting a comprehensive examination while the Court Order is open.

Mayor DePiero noted that Mayor Bacci was present.

V. Adjournment

MOTION – There being no further business to come before the Committee, Mayor DePiero adjourned the meeting at 11:53 a.m.



Dean DePiero, Chair
Governance Committee
Northeast Ohio Regional Sewer District