MINUTES NORTHEAST OHIO REGIONAL SEWER DISTRICT BOARD OF TRUSTEES MEETING MAY 5, 2011

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:31 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown

R. Sulik
D. DePiero
J. Bacci

S. Kelly W. O'Malley

G. Starr

Mayor Starr arrived after Roll Call.

The Secretary informed the President that a quorum was in attendance.

II. Approval of Minutes

MOTION – Mr. O'Malley moved and Mr. Sulik seconded that the minutes of the April 21, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that no members from the public registered to speak during Public Session.

IV. Executive Director's Report

Mr. Brown indicated that Mayor Starr was present.

Executive Director Ciaccia advised that five public meetings have been held to discuss the proposed rates for 2012-2016, with one more scheduled to be held at Easterly next week. The fifth meeting was yesterday in Middleburg Heights and attended by over 300 people. Executive Director Ciaccia stated that the meeting went well and good questions

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 2 of 15

were asked. He advised that questions from all public meetings will be logged and categorized, currently totaling 26. Those questions will be presented to the Board and discussed during its next meeting.

The third Finance Committee meeting regarding the proposed rates was held this morning. Executive Director Ciaccia stated that more good questions were asked and requests were made for additional information on the alternatives. He advised that the next meeting will include community comments and alternatives. He hoped to present the rates as an action item in June so there will be enough time to program the new structure with the Cleveland billing system and have ample time for testing.

Mayor Starr thanked Executive Director Ciaccia, Director of Watershed Programs, Frank Greenland, Director of Engineering & Construction, Kellie Rotunno and other staff members for their presentation during the Middleburg Heights public meeting. He also thanked Deputy Executive Director F. Michael Bucci and Director of Finance, Jennifer Demmerle for being "on the front lines."

Mayor Starr stated that the speakers during last evening's meeting included residents of Cleveland, Strongsville, Parma, Parma Heights, Berea and other suburbs in addition to Middleburg Heights, comprising a good cross-section of the area. He rhetorically asked what other public utility organization has conducted the same type of outreach. Mayor Starr stated that a range of emotions were expressed by those who attended the meeting and that the District served a purpose in listening to the ratepayers. He advised that comments included if the District would have won the Combined Sewer Overflow (hereinafter "CSO") litigation, questions regarding the length of the consent decree, the impact on business, cost overruns, the effect on apartment units, confusion over Cleveland Water Department (hereinafter "CWD"), sewer and Stormwater Management Plan (hereinafter "SMP") fees and affordability programs. He hopes the CWD billing system is on the road to recovery because it impacts the District's credibility. Mayor Starr stated that how the District follows up on the questions and comments will be a key.

Executive Director Ciaccia advised that during the Finance Committee meeting Mr. Sulik requested comments and questions from the public meetings be shared with the Board. He advised that information will be presented to the Board in a concise format.

Executive Director Ciaccia and District staff met with federal Judge Nugent and the Department of Justice on April 27 to discuss their review of the comments received in regards to the consent decree. Judge Nugent set a hearing date of June 30 for acceptance of the consent decree.

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 3 of 15

Judge Pokorny issued a ruling that the District does indeed have the authority to implement the SMP under Ohio Revised Code 6119 and its original court order to carry out the program.

In addition, he ruled that the District does not need current member communities' consent to carry out the program. Executive Director Ciaccia stated that those were very favorable rulings, as expected.

Judge Pokorny ruled that seven communities in Summit County -- which the District does not serve in their entirety -- are not member communities; they are in the District by virtue of a contract with the Summit County Department of Environmental Services. Executive Director Ciaccia advised that those communities are effectively taken out of the court case and District staff will continue discussions with Summit County regarding furthering common interests with stormwater management because four communities are served in their entirety.

Cuyahoga County Executive Ed FitzGerald convened the various parties for a discussion regarding possible mediation in the case. Executive Director Ciaccia stated that District staff and the communities present agreed, as did the intervening parties.

Mr. FitzGerald sent a Memorandum of Understanding (hereinafter "MOU") this week hoping all parties would sign it as a gesture towards mediation. Executive Director Ciaccia explained that the District could not agree to the first iteration he sent because it contained a clause jointly asking for continuance of the case to an unspecified period of time. Mr. FitzGerald immediately sent an amended MOU that staff thinks is reasonable. Executive Director Ciaccia advised that an add-on resolution under today's action items would authorize the District to enter into said MOU.

Mr. FitzGerald appointed Cleveland State University Provost Geoffrey Mearns as the mediator. Executive Director Ciaccia stated that he thinks Mr. Mearns is a good choice and staff looks forward to proceeding with the process. He has no allusions as to the final outcome but thinks it is in the District's interest to move forward.

A hearing is scheduled in Judge Pokorny's chambers today to hear a motion to compel that the suburban communities filed for certain privileged e-mails. There is also a status meeting for the trial to begin on July 18.

Executive Director Ciaccia stated that the Suburban Council of Governments (hereinafter "SCOG") held its annual meeting last week for the purpose of electing officers. Mayor Renda of the Village of Moreland Hills was elected president, as Mayor Leiken did not seek reelection, primarily because his community is consenting to the SMP and he will be called by the District as a witness in the case should it go forward.

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 4 of 15

Executive Director Ciaccia advised that he informed the SCOG that it must consider the status of the seven Summit County communities that are no longer considered members. He also provided a brief overview of the proposed rates for 2012 through 2016.

Executive Director Ciaccia advised that a status conference will be held today regarding the MCT-3 litigation with Judge O'Donnell. The District will ask Judge O'Donnell to set a trial date; he previously alluded to it being held in July.

A final pretrial is scheduled for July 7 and trial for August 8 regarding the 3320 Woodland Avenue litigation.

Executive Director Ciaccia stated that during the last Board meeting Mayor Starr raised an issue in regards to bidding terms and insurance. Mayor Starr called him on Friday and put him in contact with the individual who raised the issue.

The matter was researched and found it was a valid point. The language relative to reinsurance was inserted into bidding documents in 2006. Executive Director Ciaccia explained that staff went through its reviews of the bidding terms, but it was not recognized as a problem. Staff now thinks it is worthy of being removed to open bidding for more bidders.

Marlene Sundheimer, Director of Law, advised the matter was researched to determine why reinsurance was put into the sentence stating that reinsurance and personal sureties are not acceptable for bonds. This was relative to the invitation to bid provision dealing with bid bonds and performance bonds.

The insertion of language that reinsurance was not acceptable occurred in 2006, which may have been a precautionary measure in the aftermath of Hurricane Katrina when many insurance companies that dealt with reinsurance defaulted and left some insureds high and dry without recourse.

Ms. Sundheimer explained that in reviewing this issue with outside counsel and conferring with the District's insurance broker, there is no reason to have that restriction in the invitations to bid. Therefore, it was removed.

Mr. Brown thanked the Executive Director and staff for their due diligence. He stated that he thought the outcome was appropriate.

Mayor Starr inquired if the Board could receive a written report on the investigation. Ms. Sundheimer indicated she could provide a written report.

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 5 of 15

Mayor Starr stated that this issue impacted competitive bidding by restricting bids going back to the prior administration, meaning fewer bids had been received. Removing the reinsurance language will result a couple more bids per contract, which could make bids more competitive and lower rates. He questioned who was responsible for the language. Ms. Sundheimer advised that who is responsible is unknown; it is assumed the language was inserted by the former general counsel. No one in the Engineering Department recalled that language being inserted.

Mayor Starr stated that he consulted an insurance executive and owner. He received two legal opinions from an attorney who specializes in this area. According to them this language was put in specifically to favor certain insurance brokers who got the business, and the surety was placed in the business with them. Someone received a benefit unknown to the District and unknown since the new administration took over. He stated he was glad to see the issue he raised was taken care of and he thanked the staff.

Executive Director Ciaccia and the Board congratulated Mayor Bacci on the birth of his new daughter.

V. Action Items

Authorization to Enter into Agreement

Resolution No. 100-11

Advertise for Bids on the East 55th Street Floatables Facility Rehabilitation Project (FLO-55). Engineer's Opinion of Probable Construction Cost: \$350,000.00.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution No. 100-11. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 101-11

RFPs for District Depositories for a Five-Year Period.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 101-11. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 102-11

Purchase from OARnet, a State of Ohio Entity, VMware Software Licenses

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 6 of 15

Including One Year of Support and Maintenance. Cost: Not to Exceed \$51,412.63.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 102-11. Without objection, the motion carried unanimously.

Authorization to Enter Into Agreement

Resolution No. 103-11

Agreement with the Cuyahoga Metropolitan Housing Authority (CMHA) for the Disposal of Hauled Storm Sewer Grit from Storm Sewer Cleaning at CMHA Properties. Cost: The Discharge Shall be Charged by the District to CMHA Subject to a Rate of \$57.64 Per Ton and Subject to a District Administrative and Analytical Fee of \$20.00 Per Truck Load.

Mr. Sulik questioned if the District has done this type of work in the past with CMHA. Frank Greenland, Director of Watershed Programs, advised that similar work had been done with other entities but not CMHA. This agreement is a two-year commitment.

Mr. Sulik inquired if that is the current rate. Mr. Greenland advised that it is the current rate and staff will see if adjustments are necessary in the future.

Executive Director Ciaccia advised that this rate is the District's contract cost for the hauling, plus a \$20 administrative charge. He asked them to examine the fee and determine if it is too low.

Mr. Brown stated that the District might be in a position to provide this and related services to other entities. The cost for labor and material overhead ought to be a standard cost that could be reviewed and adjusted accordingly.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 103-11. The motion carried with one abstention by Mayor DePiero.

Authorization to Enter Into Contract

Resolution No. 104-11

One-Year Contract with Vorys, Sater, Seymour and Pease, LLP for State Advocacy Services. Cost: Not to Exceed BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 7 of 15

\$60,000.00 with a One-Year Option to Renew.

Resolution No. 105-11 One-Year Requirement Contract with

Kemira Water Solutions, Inc. for Ferric Chloride Solution for Use at All Wastewater

Treatment Plants. Cost: \$271,950.00.

Resolution No. 106-11 Two-Year Requirement Contract with

Robinson Pipe Services, Inc. for Industrial Cleaning Services at District Treatment Plants and Jennings Junction Chambers.

Cost: \$194,530.00.

Resolution No. 107-11 Contract with Marous Brothers

Construction, Inc. for the Southerly Spiral Screw Pump Replacement (SSPR-2) Project.

Contract Amount: \$292,758.00.

Resolution No. 108-11 Two-Year Contract with Spiniello

Companies for the Combined Sewer Overflow Relining and Replacement Contract (CSORARC). Contract Amount:

\$12,695,350.00.

Ms. Kelly stated that only two bids were received for Resolution No. 105-11. She questioned why firms would not submit bids given the current economic environment. She also noted a significant 100% difference in the two bids received and asked why that would be.

Mr. Czerski stated that PVS utilizes a different manufacturing process which makes it more expensive and that District staff specifically inquired about that. He explained that Kemira and PVS are suppliers for multiple distributors and maintain multiple contracts. There were a couple of concerns. Various reasons included they could not beat that at competitive pricing and for legal reasons they could not bid against their supplier.

Ms. Kelly stated that she was not clear on the discrepancy and the 100% differential in the two bids. She inquired if one bidder uses a different material. Mr. Czerski advised that one bidder uses a different, more expensive manufacturing process.

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 8 of 15

Ms. Kelly questioned if the two products are comparable to one another if one is 100% more than the other. She inquired as to the value of the material used by one over the other.

Mr. Czerski explained that the District set a specification which the plants require for nutrient removal. As long as the lowest bidder meets that spec, it does not matter how much better another's product is as long as that requirement is met. He does not have the answer the difference in quality between PVS and Kemira. Kemira met the spec.

Ms. Kelly inquired if one product is more efficient than the other product. She reiterated that she needed clarification regarding the 100% discrepancy. The bottom line is we are getting a product to perform a certain job and the efficiency of one over the other.

Executive Director Ciaccia advised that while reviewing this bid he had similar questions related to cost differential and the lack of bidders. He stated that Ms. Kelly asked good questions and that he would like to pull this item from the agenda in order to answer those questions. He stated that it will be brought back during the next meeting.

Mr. Brown stated that was a good idea. He asked the Executive Director to provide information on historical pricing, because this may be something the District would use routinely. He thinks part of the standard spec contains what the components of the product are supposed to be and its performance. As long as those qualifications are met a bidder would be eligible for submittal and approval of the use of the product.

Looking at how many bids were received and what the pricing has been historically might provide insight on how we got to now.

Mr. Czerski advised that staff pulled up pricing information and typically PVS has been much higher. They have bid at least four or five other times and are typically coming in at a much higher price. Kemira has gotten this contract multiple times because they come in as the lowest.

Executive Director Ciaccia stated that Kemira uses some recycled products in their manufacturing. It is surprising that a company would continue to bid against one it knows it cannot beat. He has further questions and when they are satisfied and the item will be brought back during the next meeting.

Resolution No. 105-11 was pulled from the agenda.

Mr. Brown moved conversation to Resolution No. 108-11, and inquired if it was in effect a requirement contract. He questioned if there are designated locations where the

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 9 of 15

removal or relining is going to take place. He also inquired if this is a cost of time and material based on linear feet. Kellie Rotunno, Director of Engineering, advised that the bid was based upon estimated quantities and is a rehab contract similar to ones done in the past. It is specifically focused on the CSO pipes within the system that need rehabilitation. They are located throughout the system. The bid was developed based upon estimated quantities or lump sum bid items as appropriate.

Mayor Starr inquired if they would perform the actual work, which Ms. Rotunno affirmed. This is a relining and replacement contract for pipes relied upon for the CSO system. They will be rehabilitated where they are deteriorated and all work will be performed by the contractor and the subcontracting team.

Mayor Starr stated that the engineer's estimate is \$17,500,000 and this bid is almost \$5 million under that figure. Ms. Rotunno explained that the second- and third-lowest bidders were each off by about \$1 million, meaning there was roughly \$2 million separating the three lowest bids. The fact that there is clustering around the low bid did not concerned her that the bids were so far under the engineer's estimate. She explained that it is likely a reflection of the contractor's chosen means and methods on the contract and efficiency.

Mayor Starr stated that is a good point. He also inquired if prevailing wages will be paid on this job. Ms. Rotunno affirmed.

Mayor Starr stated that he is unfamiliar with Spiniello Companies (hereinafter "Spiniello"). He noted that it is based in New Jersey while the other contractors are from the Cleveland area. Ms. Rotunno advised that Spiniello successfully completed the Big Creek Interceptor Rehabilitation Project. The lining had failed and needed repair. She explained that was their first project with the District and the job was done on time and on budget. Executive Director Ciaccia stated that Spiniello has performed a number of jobs for CWD cleaning and relining water mains.

Mr. Sulik expressed concern that the data the contractor was given was current and accurate. Ms. Rotunno advised that an inspection was performed as part of the design contract within the last 18 months. She noted that only a portion of the pipes are inspected as part of the design, as it would not be cost effective to look at every one of them.

Ms. Rotunno stated that the District is pushing designers to more accurately estimate quantities. If there is not enough quantity in the bid item or available General Allowance funds to address higher quantities than anticipated at the time of bid, the issue will be deferred. She advised that cost overruns on rehab projects are avoided through the new bidding structures and management during construction.

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 10 of 15

Mr. Brown noted that Ms. Rotunno mentioned means and methods and inquired what methods will be used for the relining. Ms. Rotunno indicated a variety of relining methods would be employed, depending on the pipe itself. There will be some cure-in-place and some slip line. She explained that the means and methods to which she referred was how the contractor will access the pipe and whether they will put in temporary access shafts or try to access it through existing structures.

Ms. Rotunno stated that the actual pipe repair is described in the design documents and had to be bid upon as outlined.

Mr. Brown stated that even though relining is a nonintrusive construction methodology, the fact that access shafts may be in place can be a nuisance to different municipalities. He asked Ms. Rotunno to coordinate well in advance with the affected communities. Ms. Rotunno stated that staff would do that.

Moving discussion to Resolution No. 104-11, Ms. Kelly stated that the District contracted with Tucker, Ellis and West to provide state advocacy services. She questioned if they were contracted for one year, but were only able to perform services for three months. Executive Director Ciaccia affirmed

Ms. Kelly inquired how the firm was compensated and if either party owes money. Constance Haqq, Director of External Affairs, explained that the firm received compensation on a monthly basis.

Ms. Haqq advised that Tucker, Ellis and West experienced a change in organizational direction and that is why their contract was terminated. She explained that the District was happy with their services but because of their changes a new firm was sought.

Mayor Starr inquired as to Vorys, Sater, Seymour and Pease, LLP's (hereinafter "Vorys") top three goals and what they would try to accomplish for the District in the state legislature. Ms. Haqq advised that Vorys counsel Teresa Beasley was present. Executive Director Ciaccia added that Darnella Robertson is also working with them on those priorities.

Ms. Robertson stated that as with the previous firm the District will to primarily focus on requested legislative changes that began last year.

Last year the District was successful in adding deferred compensation language to a bill that benefited District employees. She advised that work will be conducted on contracting authority, two provisions to increase the competitive bidding from \$25,000 to

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 11 of 15

\$50,000 as well as adding language to include the District on greater flexibility to help with the SMP.

Ms. Beasley stated that the Vorys team includes Ted Boggs, who is involved in the environmental area and Karen Cincione and Fred Mills for state advocacy work. A kickoff meeting is scheduled with District staff to discuss goals for the year and how Vorys will assist. In addition to working on these legislative changes a goal is to bring matters to the District's attention that might impact it going forward.

Ms. Haqq stated that the District wants to increase its profile and the awareness of state regulatory organizations and legislators on who we are and what our issues are.

MOTION – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution Nos. 104-11 and 106-108-11. Without objection, the motion carried unanimously.

Authorization to Pay Dues

Resolution No. 109-11 Dues for National Association of Clean

Water Agencies 2011-2012 Sewage Sludge Incinerator Advocacy Coalition. Cost:

\$35,000.00.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution No. 109-11. Without objection, the motion carried unanimously.

Sewer Use Code Matters

Resolution No. 110-11 Adopting the Findings of the Hearing

Examiner with Regard to the Sewer Account of Michael Kenny, Sewer District Case No.

11-001.

Resolution No. 111-11 Authorization to Amend Titles I and II of

the Code of Regulations.

MOTION – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution Nos. 110-11 and 111-11. Without objection, the motion carried unanimously.

Authorization to Enter into Memorandum of Understanding

Resolution No. 112-11 Between the Northeast Ohio Regional Sewer

District, member

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 12 of 15

communities/municipalities and intervening parties in the case of NEORSD v. Bath Township, et al., Case No. CV 10 714945

Mayor DePiero inquired if a mediation format had been selected or if it would be chosen by Provost Mearns. Executive Director Ciaccia explained that nothing had been defined as of yet. He advised that a press release announced Provost Mearns and wanted to get our authorization today to sign the MOU. After today he thinks we can try to get that defined.

MOTION – Mr. Sulik moved and Mayor Bacci seconded to add and adopt Resolution No. 112-11. Without objection, the motion carried unanimously.

VI. Information Items

1. Program Management Status Report and Update – April 2011.

Ms. Rotunno advised that after June 1, RFPs will be issued and proposals and construction bids will be received which will include goals for the MBE/WBE Program. Staff is working hard to update the forms and paperwork so the bid documents can be updated.

There is much coordination regarding the Renewable Energy Facility at Southerly. She advised that the incinerators were pre-procured through one contract and are being installed by a contractor under a second contract. The incinerator manufacturer and the contractor who is installing the equipment in the field needs increased coordination and there are significant resources assigned to ensure it is as seamless as possible.

Ms. Rotunno indicated the Nine Mile Site is active. Trees have been cleared on the south side of I-90 towards Bratenahl and the amphibians that lived there were located. Trailers will be on site in June when construction activity begins in earnest.

Mr. Greenland and the Engineering Department have been working on stream restorations as part of the Water Resource Restoration Sponsor Program. She explained that some of the projects in construction were damaged when floods and heavy storms occurred in February. Staff is determining how best to make repairs and initiate redesign so they are robust enough to withstand the storms that can be experienced in an urban stream environment.

Ms. Rotunno moved conversation to the Capital Program and Key Performance Indicators (hereinafter "KPI").

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 13 of 15

The District has delivered four projects in 2011 which matches the year-to-date plan. Ms. Rotunno advised that cash value is thus far running a bit under plan. The District has been receiving competitive bids and is on track to meet its schedule.

The first quarter of the year has been slow in terms of the number of projects awarded. She stated that "the third and fourth quarter ramp-up is happening so we will have heavy lifting toward the end of this year."

Ms. Rotunno advised that on average bids are coming in about 16.9% under the engineer's estimate, which is a reflection of market conditions continuing to favor cost effective capital projects.

Ms. Rotunno explained that when low bids are received one wonders whether a change order will be necessary later. However, the only project that has closed so far this year was within the KPI, using less than half of the general allowance prescribed.

There is \$447 million overall in active construction projects.

A general allowance of \$30.31 million is available in construction jobs, of which only \$2.67 million has been approved. Ms. Rotunno explained that represents less than 1% of construction contract values authorized in change orders -- a very strong number.

Ms. Rotunno advised that the unspent money in the various categories totals \$8.3 million saved over the course of executing these jobs, which turns out to be about 10% less than they were bidding. The jobs being bid are closing on average 10% under the bid price. She explained that is a good metric in terms of how change orders are managed and if low bids are creating problems. She thinks this is a good way to show the Board that staff is diligently managing construction.

Ms. Rotunno stated that at least 80% of projects meet or exceed the established MBE/WBE/SBE Program goals. Only one project has closed out year to date, which was a project under the old program and closed in excess of both the contractor's committed goal and the District's on both MBE and WBE. That project was successful in regards to utilizing subcontractors.

Mr. Brown stated that he continues to be encouraged by the District's ability to successfully meet KPIs and that they are both transparent and understandable. As construction program activity increases, he stated that the challenge will be managing multiple projects and continuing to complete them on time, on budget, and providing the benefit to the community for which they are scoped.

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 14 of 15

Mr. Brown stated that he looked forward to hearing how the District is doing a better job with project delivery than it has historically. Good work has been performed but the metric many Board members are interested in are issues dealing with budget, timelines and the general allowance and the management of those funds.

Executive Director Ciaccia stated that the KPI on the engineer's estimate, while under, is still not within the KPI and is something staff will work on. If this KPI has to be off, it is better to be on the underside.

Executive Director Ciaccia stated that he did not want to downplay the coordination on the Renewable Energy Facility. He explained that the District tries to stay away from pre-procurement arrangements because they lead to coordination issues. However, he felt it was prudent in this case because of the scope of the project and the size of the equipment associated with it.

Executive Director Ciaccia stated that a big issue now relates to schedule and the money remaining in the general allowance. The Engineering staff is faced with the challenge of reining in that project. He wanted the Board to be fully aware of that issue.

VII. Open Session

There were no matters for Open Session.

VIII. Public Session (any subject matter)

No members from the public registered to speak at Public Session.

IX. Executive Session

Mr. Brown stated that there were matters for discussion in Executive Session.

MOTION – Mayor Bacci moved and Mr. Sulik seconded to enter into Executive Session to discuss the Northeast Ohio Regional Sewer District versus 3320 Woodland Avenue an acquisition settlement authorization and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) and attorney-client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

The Board met in Executive Session from 1:28 p.m. to 1:34 p.m.

BOARD OF TRUSTEES Regular Meeting May 5, 2011 Page 15 of 15

X. Adjournment

MOTION – Mr. Brown stated business having been concluded he would entertain a motion to adjourn. Mr. O'Malley moved and Mr. Sulik seconded the motion to adjourn at 1:34 p.m. Without objection, the motion carried unanimously.

Dean E. DePiero, Secretary

Board of Trustees

Northeast Ohio Regional Sewer District

Darnell Brown, President

Board of Trustees

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