

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
AUGUST 16, 2012

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:35 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown
R. Sulik
J. Bacci
T. DeGeeter
S. Kelly
G. Starr

ABSENT: W. O'Malley

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

II. Approval of Minutes

MOTION – Mr. Sulik moved and Mayor DeGeeter seconded that the minutes of the August 2, 2012 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

Executive Director Ciaccia moved to the first report item regarding the Stormwater Management Program (hereinafter "SMP") litigation matter. Motions to appeal were filed by the business interests being represented by Attorney Sheldon Berns, the eleven communities in opposition to the SMP from Cuyahoga County, and the Summit County communities.

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As a defensive measure, the District filed cross appeals in order to preserve the ability to argue specific issues relating to the 25% cost-share, the declining block established for the larger properties, the curriculum for schools and the shared engineering costs all of which were adopted by the Board under Title V in the *Code of Regulations*. Executive Director Ciaccia explained that the District is not interested in removing those items from Title V and that cross appeals was necessary in order for the District to argue those points in the future.

Executive Director Ciaccia advised that the parties also filed a Motion to Stay requesting that Judge Pokorny issue a stay order pending the outcome of the appeals. The District filed a Brief in Opposition to the Motion to Stay on the basis that it is improper to request a stay order.

Executive Director Ciaccia advised that the District filed a Motion to Consolidate the Appeals since they are all essentially related.

Executive Director Ciaccia advised that the District made a good offer to the Summit County communities. Some of the terms Summit County is seeking were discussed previously. The District and Summit County have been working on a draft proposal which is now being reviewed by Summit County's counsel. Executive Director Ciaccia was hopeful that Summit County and the District will reach a consensus and that Summit County will withdraw its Motion to Appeal. Executive Director Ciaccia noted that there have been no settlement discussions with the other parties and that the District would be open to those discussions but has not been approached except through the filings of motions and briefs in the court.

Executive Director Ciaccia advised that the District continues to move forward with the planning and implementation of the SMP including projects, maintenance and billing with an anticipated commencement date of January 1, 2013.

Executive Director Ciaccia moved to the next report item and he advised that the KMM&K case is officially dismissed and that the District intends to pursue the crime policy matter with Travelers Insurance.

Executive Director Ciaccia moved to the next report item regarding the billing agreement between the District and the City of Cleveland Division of Water (hereinafter "CWD"). The meeting scheduled on August 13th was canceled by the CWD for the reason that they had not completed their review of and response to the District's proposed billing agreement.

Executive Director Ciaccia advised that the District is the customer seeking services from the CWD and has therefore proposed desired terms and conditions to be considered for

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the billing agreement. The CWD has had the District's proposal for about four weeks. Executive Director Ciaccia advised that he received an email from the Director of Public Utilities, Barry Withers, indicating that the document is being reviewed by the City's Law Department and that a meeting will be scheduled once the review has been completed.

Meanwhile, the District received its billing invoice for those services provided by the CWD under the current billing agreement. The charge is \$6.17 per bill, which reflects a 32% increase in the amount per bill. Executive Director Ciaccia indicated that this substantial increase primarily results from the costs incurred for the implementation of the new billing system, which will be a 15-year payback. The bill and backup materials are currently being reviewed by the District.

Executive Director Ciaccia moved to the next report item regarding the District's finances and he advised that included in the Board packets was the financial summary through July. With 58% of the year complete, the District is slightly ahead on its revenues which indicates that the CWD's billing processes have improved and the expected revenues are being received. The District's expenses are at 50.4%, which is below what was projected. Executive Director Ciaccia stated that the District is doing well from a financial standpoint.

Mayor Starr referred to the anticipated commencement to begin billing for the SMP and he questioned how the District plans moving forward in light of the pending litigation.

Executive Director Ciaccia stated that absent an injunction preventing the District from moving forward, the District has the authority to implement the SMP based on Judge Pokorny's ruling which not only confirmed the District's authority but also defined the SMP fee as a fee for service and not a tax. The other parties have requested a stay in execution but have not asked for an injunction. Executive Director Ciaccia stated that, at this point, the District is free to move forward with implementation of the SMP; however, certain risks may be associated with that decision. This matter could very well be taken to the Supreme Court of Ohio, which could take two or three years. At that point, the District may have a fully operating SMP, which could ultimately be ruled against.

Mayor Starr questioned as to what will transpire on January 1, 2013. Is this when the bills will be mailed out?

Executive Director Ciaccia replied that the customers slated to receive a bill in January will be billed for stormwater at that time.

Executive Director Ciaccia moved to the next report item and he advised that part of the District's strategic plan is to continue with its diversity and inclusion initiatives. An

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internal committee was formed and determined that domestic partnerships should qualify for District benefits. It is arguably defensible since same-sex couples cannot marry in the State of Ohio. Executive Director Ciaccia assured that providing this benefit will not upset the budget. Employees desirous of taking advantage of this benefit will be required to complete certain affidavits and forms.

Mr. Sulik inquired about the proof that will be provided confirming that a domestic relationship does exist?

Executive Director Ciaccia turned discussion over to Employee and Labor Administrator, Holly Woods. She advised that eligible employees will be required to complete a Declaration of Domestic Partnership, which must be notarized. The partners must be involved in a single, committed same-sex relationship and share a common residence. The parties must be 18 years of age, of sound mind, not legally married or separated, not related by blood and financially interdependent.

Mr. Sulik requested a copy of the policy.

Executive Director Ciaccia advised that this benefit will be available beginning in January 2013. He noted that the City of Cleveland and Cuyahoga County have adopted similar policies.

Executive Director Ciaccia moved to the final report item and he advised that over the last few Board meetings discussion was held regarding the District's professional services contracting and the public's perception of the District's contracting processes. Executive Director Ciaccia suggested that in order to constructively address those perceptions, he must first conduct a review of the facts. He is therefore engaged in the process of reviewing the professional services contracts over the last several years in order to determine whether there are any trends with respect to bidders, proposers and distribution of contracts.

Executive Director Ciaccia noted that Ms. Kelly raised the issue of large institutions bidding on jobs that smaller businesses can do and whether those smaller businesses can compete. Executive Director Ciaccia stated that he wants to further examine the professional services contracting processes. Jackie Williams and Tiffany Jordan along with their staff have put together an extensive spreadsheet, which is under review. Executive Director Ciaccia would like to examine the experience and determine if the processes need to be changed.

- Resolution No. 201-12 One-Year Requirement Contract with Polydyne, Inc. for Gravity Belt Thickener Polymer for Use at the Southerly Wastewater Treatment Plant. Cost: \$339,300.00.
- Resolution No. 202-12 Two-Year Requirement Contract with Robinson Pipe Services, Inc. for Industrial Cleaning Services at District Treatment Plants and Jennings Junction Chambers. Cost: \$182,966.00.
- Resolution No. 203-12 Two-Year Requirement Contract with Roth Brothers, Inc. for HVAC/R Maintenance Services at All District Facilities. Cost: \$358,676.08.
- Resolution No. 204-12 Two-Year Contract with Sole Source Vendor Motornostix USA for the Lease of Predictive Maintenance Equipment and Services at the Southerly Wastewater Treatment Plant. Cost: \$192,000.00.

MOTION – Mr. Sulik moved and Mayor DeGeeter seconded to adopt Resolution Nos. 199-12 through 204-12. After discussion, Mayor Bacci requested a roll call vote on Resolution No. 200-12. A roll call vote was taken and Resolution No. 200-12 passed with one abstention by Mayor Bacci. The motion to adopt Resolution Nos. 199-12 and 201-12 through 204-12 carried unanimously.

Ms. Kelly inquired about the inductively coupled plasma optical emissions spectrometer (hereinafter “ICPOES”).

Executive Director Ciaccia turned discussion over to Mark Citriglia.

Mr. Citriglia explained that the ICPOES analyzes metals in the water which is necessary for the NPDES permit.

Mr. Brown questioned if it is a measure for compliance? Mr. Citriglia affirmed.

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VI. Information Items

1. Program Management Status and Update – July 2012.

Ms. Rotunno advised that earlier today she toured the Nine Mile Creek site with representatives from the Detroit public broadcasting group who were filming a documentary. They plan to use footage of the District's construction site as well as interviews with the District staff. Ms. Rotunno advised that Director of Administration and External Affairs, Constance Haqq, and her staff are spearheading this initiative.

Ms. Rotunno stated that the cameraman was taken into the crane man cage in order to obtain a 360 degree view of the construction site. Ms. Rotunno noted that on a day like today, you can see past the Cleveland Clinic.

Ms. Rotunno advised that the Tunnel Boring Machine (hereinafter "TBC") is "chewing" through the rock and that she observed a pile of Chagrin shale at the site which was reduced to small fragments from the machine, which is a good sign. The grout mix continues to be tweaked and needs to be perfected before proceeding further.

Ms. Rotunno advised that approximately 200 feet of the TBC is hanging into the back end of the tunnel and must advance before being fully buried. There is a long way to go but everything seems to be operating well at the initial 35 feet.

Ms. Rotunno stated that the mining sites are going according to plan and that the blasting is handled through vertical lifts going down through the shafts. Ms. Rotunno noted that the rocks responded differently than anticipated during one horizontal blasting which resulted in a call from Councilman Polensek because he felt the vibration near his home. Ms. Rotunno stated that "it was all within the tolerances and expectations and our monitors so there's no problem" and that blasting within the Chagrin shale will carry further. The methods will be modified to have more control over instances where horizontal blasting is necessary.

Ms. Rotunno moved discussion to the ETDPS project and she advised that the contractor is onsite and working towards syncing the two shafts. The rock is performing as predicted by the engineers. There have been no surprises which is ideal in construction.

Ms. Rotunno moved discussion to the Renewable Energy Facility (hereinafter "REF") and she advised that the Board approved a contract modification at the last Board meeting. The Jepson board installation is completed and the waste heat boilers were inspected by the State boiler inspector. Ms. Rotunno noted that site work is taking place as well as the power up of the electrical substations and motor control centers. The project is in the startup phase, commissioning phase, electrical instrumentation and

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control. Ms. Rotunno stated that eight months remain on the duration of the REF construction and the District anticipates meeting its targeted completion date.

Executive Director Ciaccia added that the REF relies on having sludge to burn. The District currently charges septic companies nine cents per pound for grease and septic material whereas the new Quasar facility in Collinwood charges eight cents and Bedford Heights charges five cents. Since the REF relies on this material, Executive Director Ciaccia informed the Board that he will be making a recommendation to decrease the amount the District charges septic companies for their material.

Mayor Bacci questioned if the REF will not operate without sludge?

Executive Director Ciaccia explained that the REF facility is designed to create energy. More sludge results in an increased production of energy.

Mayor Bacci questioned if the sludge competition could result in the District having to pay for sludge.

Executive Director Ciaccia stated that the District generates enough sludge to keep the REF generating. The sludge from the septic companies would be extra.

Ms. Rotunno clarified that the REF generation component relies upon the volatile solid component of the sludge. The grease powers the incinerator's ability to burn autogenously without having to rely upon natural gas to incinerate sludge. Yes, the District will have sludge; however, the quality of the sludge remains questionable. Having grease mixed with sludge is more environmentally friendly and generates more electricity.

Mr. Brown requested further explanation on the autogenously burn process.

Director of Operation and Maintenance, Dave McNeeley, explained that the primary fuel for the REF is sludge and grease. The natural gas that enters the system is secondary and is used to raise the temperature. Mr. McNeeley explained that autogenously burn is that no secondary fuel source is being used and that it is self-sustaining.

Ms. Rotunno moved discussion to the key performance indicators (hereinafter "KPIs"). She noted that Engineering and Construction attempts to manage its projects as projected at the beginning of the year. However, situations arise where certain projects are combined because they are like projects whereas others may be separated that were initially combined. Although the number of projects may change resulting in periodic adjustments made throughout the year, the value stays the same. Going forward, Ms.

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Rotunno suggests shifting focus to the value amounts instead of the number of projects delivered.

Ms. Rotunno moved to the first KPI and she advised that the District has awarded \$100.4 million of projects against its target goal of \$147 million.

Ms. Rotunno moved to the next KPI regarding the engineers' estimates of probable construction cost. She advised that one bidder was much lower and one was "in the sweet spot". The average variance is actually 0.8 above the engineer's estimate and the District is performing well against this KPI.

Ms. Rotunno moved to the next KPI regarding change order management and the District's commitment to deliver projects using less than half of the general allowance. To date, \$126 million has been awarded against the \$236 million goal, which is about 14% under the projected cash flow. Ms. Rotunno noted that the District is within the planning range to reach that goal.

Ms. Rotunno stated that 2012 performance is good and that projects have been closing under 85% of the base contract amount. Ms. Rotunno referred to historical performance going back to 2008 and she advised that the District awarded \$836 million in construction projects. The average percentage of general allowances for construction changes added to the base contract amount is 3.5%. The District is under 4% whereas the industry average is 5% or 6%. Ms. Rotunno explained that the 3.5% change conditions are for differing site conditions, errors in omissions and situations that arise during construction that may need to be tweaked in the field. Ms. Rotunno noted that the District is very proud of its fiscal management of the construction program.

Mr. Brown inquired if the District ever benchmarked itself against other cities to see how they compare.

Ms. Rotunno affirmed. In a recent trip to New York City, Ms. Rotunno advised that the District had an opportunity to benchmark itself against a peer agency in New York City. Said agency delivers wastewater services, builds construction and capital projects and has a CSO program.

The economic situation in New York City differs greatly when compared to Cleveland. The New York City agency's average change percentage on its construction program is 40% to 42%. According to Ms. Rotunno, when compared with the peer agency in New York City with respect to change percentages, the District "looks good."

Ms. Rotunno indicated that she would like to benchmark against a peer utility group that would be willing to share their numbers with the District. She noted that the District has

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given presentations at the Construction Managers Association and organizations have been impressed with the District's program.

Mr. Brown stated that it is positive to see how well the District is reaching its goals and metrics. There is value added in learning from peer agencies' experiences which in essence could help move the industry forward.

Ms. Rotunno agreed with Mr. Brown. She advised that there will be an exchange of information since the Deputy Director of Engineering and Construction from New York City is planning to visit Cleveland to observe the District's construction management process, SharePoint tool and workflow tool.

Ms. Rotunno moved to the next report item regarding the business opportunity program KPI. The District is striving to obtain more than 20% in 2012. The next five projects are slated to close out having met that KPI.

Ms. Rotunno moved discussion to the cash flow against the business opportunity program and she advised that payments are tracking close to the plan and that the subcontractors are getting paid.

Ms. Rotunno concluded her report with a quote; "obstacles are things that a person sees when she takes her eyes off her goals."

Mr. Brown thanked Ms. Rotunno and he stated that it "shows the benefit of where we are with this program versus historically some of the challenges we've had in the past." It is a transparent process which enables the District to observe the metrics that are being met as well as the challenges. Some of those challenges necessitate a recovery plan to ensure the goal is met with a desired outcome. Mr. Brown commented that it is "value added."

VII. Open Session (any subject matter)

There were no items for discussion.

VIII. Public Session

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

IX. Executive Session

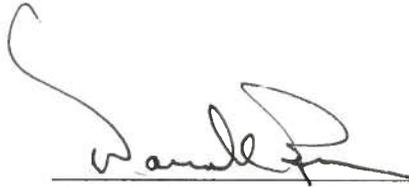
Mr. Brown stated that there were no items for discussion in Executive Session.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Ms. Kelly seconded the motion to adjourn at 1:15 p.m. Without objection, the motion carried unanimously.



Sheila Kelly, Secretary
Board of Trustees
Northeast Ohio Regional Sewer District



Darnell Brown, President
Board of Trustees
Northeast Ohio Regional Sewer District