

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
MAY 19, 2016

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:30 p.m. by Darnell Brown.

I. Roll Call

PRESENT: D. Brown  
R. Sulik  
W. O'Malley  
J. Bacci  
T. DeGeeter  
S. Dumas  
R. Stefanik

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

II. Approval of Minutes

**MOTION** – Mayor Bacci moved and Mr. Sulik seconded to approve the minutes of the April 26, 2016, Special Board Meeting. Without objection, the motion carried unanimously.

**MOTION** – Mr. Sulik moved and Ms. Dumas seconded to approve the minutes of the May 5, 2016, Board Meeting. Without objection, the motion carried unanimously.

III. Public Session

Chief Executive Officer (CEO) Ciaccia advised that no one signed up to speak about a specific agenda topic.

IV. Chief Executive Officer's Report

CEO Ciaccia reported that the Board met for a Special Meeting work session on Tuesday, May 17 to discuss the rates for the years 2017 through 2021. A number of options were considered related to some of the assumptions factoring towards rates.

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The first District “roadshow” will be held tonight in Macedonia at Nordonia High School followed by three other meetings that will be at the Tri-C campuses on following dates.

CEO Ciaccia noted that he was interviewed on The Sound of Ideas on Tuesday as well.

Two weeks ago the District sent letters to its 123 high-strength industrial customers that pay a surcharge regarding the District’s intention to recoup full cost of service during the next rate period. To date the District has not received any communications of concern at this point. He indicated that staff would likely follow up with another letter because they want to make sure that group of customers are aptly notified.

Mr. Brown inquired whether that notice included examples of what the rates might be for the next rate period. CEO Ciaccia stated that it did not, but it did say the District was currently only recovering 31% of its costs for treating their flow and they intend to get full cost of service.

CEO Ciaccia advised that last week he had the opportunity to travel to Washington, D.C. to address a congressional staff briefing on House Bill 4542, which is the Low-Income Sewer and Water Affordability Program introduced by Congresswoman Marcia Fudge. The briefing was fairly well attended and streamed; they are now looking for co-sponsors.

At that time, CEO Ciaccia asked its bond counsel, David Goodman, to address the Board regarding a recent notification by the Internal Revenue Service (IRS) of regulations they want to change as it relates to tax-exempt bonds.

Mr. Goodman stated that for many years an entity other than a city, county or state has qualified as a political subdivision for the purposes of being able to issue municipal bonds if it has one of what the IRS considers the three basic sovereign powers: taxing power, police power and eminent domain. The District clearly has eminent domain power.

Recently the IRS was auditing a Florida community development district and discovered that there was more private involvement in the governance of the entity than they thought was appropriate. As a response the IRS promulgated new proposed regulations to define a political subdivision that creates far more consequences.

Mr. Goodman expressed hope that the IRS might back off from these new regulations after the barrage of comments they will receive when the comment period ends on Monday, but the regulations did two things that are potentially problematic for the District.

One new regulation was to introduce a new standard of control above the sovereign power requirement, which is that a single governmental entity with all three of those sovereign powers must appoint a majority of the Board. That is not the case with the District's Board, as none of the entities appoints a majority. Additionally, any entity that appoints must have an unrestricted

power to remove an appointed Board member. Under the District governing law, removal can only be for cause.

Mr. Goodman explained that the IRS also introduced a requirement -- without defining it -- that the entity cannot provide a more-than-incidental benefit to any private person. However, all private citizens and businesses in the District's service area receive a more-than-incidental benefit from the District treating wastewater and stormwater.

The National Association of Clean Water Agencies (NACWA), of which the District is a member, is taking the lead in writing a comment letter in which they point out these flaws and how consequential the loss of access to tax-exempt financing would be for the District's already tremendous financial burdens and responsibilities.

NACWA asked some of their member agencies -- and the District specifically -- whether they would be affected by these regulations. Mr. Goodman indicated that he has been working with CEO Ciaccia, Chief Financial Officer Jennifer Demmerle and Chief Legal Officer Eric Luckage to come up with a letter that specifically points out how they would affect the District. Others entities will submit similar letters and he hopes to reverse the misguided efforts to address a very small problem.

Mr. Brown questioned when the filing date is for that letter, to which Mr. Goodman replied by midnight on Monday, May 23.

Mr. Brown inquired when a final decision may be rendered by the IRS. Mr. Goodman explained that they will conduct a hearing on June 6 but it may be a while before a final decision.

Mr. Brown asked for copies of documentation that is submitted on the District's behalf.

Moving to another subject, Mr. Brown thanked staff for the Special Board Meeting working session and he found it very beneficial to see the analysis that went into the rate structure and the primary components to fund requirements or ancillary programs. He asked the Board to review the documents to see whether there are additional concerns and in a week there may be another Special Board Meeting working session to get closure on positioning the Board to make a recommendation.

Mr. Brown concluded his comments by requesting any feedback District staff receives during its roadshows.

#### V. Action Items

##### Authorization to Advertise

Resolution No. 145-16

Advertise for Construction for the Euclid Creek Channel Repair Project. Engineer's Opinion of Probable Construction Cost: \$425,000.00.

**MOTION** – Mayor Stefanik moved and Mayor Bacci seconded to adopt Resolution No. 145-16. After discussion and without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 146-16

RFPs for Air Emission Stack Testing Services in Support of the District's Regulatory Compliance Obligations.

**MOTION** – Mayor DeGeeter moved and Mr. O'Malley seconded to adopt Resolution No. 146-16. After discussion and without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 147-16

Five-Year Contracts with First Merit Bank N.A. and The Huntington National Bank for the Deposit of Active and/or Interim District Funds.

Resolution No. 148-16

Contract with Kokosing Industrial, Inc. for the Southerly Ash Lagoon Bridge Renovation Project. Contract Amount: \$782,500.00.

Resolution No. 149-16

Contract with Oracle for the Oracle License Compliance Project. Total Cost: \$1,866,241.00.

**MOTION** – Mayor Stefanik moved and Ms. Dumas seconded to adopt Resolution Nos. 147-16 through 149-16. After discussion and without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 150-16

Modify Contract No. 130000850 with The Great Lakes Construction Company for the Easterly Facility Plan Improvements – Aerated Grit Project. Cost: A Decrease in the Amount of \$3,100,246.41 Bringing the Total Contract Price to \$32,795,553.59.

**MOTION** – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution No. 150-16. After



Basin Project. Consideration: \$0.00.

Resolution No. 157-16

Authorize Relocation Payment Associated with the District's Permanent Acquisition of Property in the City of Cleveland Necessary for Construction of the Union/Buckeye Green Infrastructure Project. Consideration: \$2,500.00.

**MOTION** – Ms. Dumas moved and Mayor Bacci seconded to adopt Resolution Nos. 152-16 through 157-16. After discussion and without objection, the motion carried unanimously.

VI. Information Items

1. Program Management Status Report and Update – March 2016

James Bunsey, Director of Engineering & Construction, announced that staff gained traction since his last report due to better weather. Cash flow increased to 60% from 56%.

Moving to design updates, Mr. Bunsey advised that savings of \$50,000 was approved in terms of the Westerly Wet Weather Improvement Project due to engineering that removed the need for some dewatering pumps, which removed capital needs and long-term maintenance.

The Westerly Primary Effluent Pump Rehabilitation Project is a design-build project that went out to bid on time within the Key Performance Indicator (KPI) of 60 days, at 54 days. The project also came in \$42,000 under the engineer's opinion of construction costs, meeting that KPI.

Mr. Bunsey advised that the Southerly Optimized Parallel Treatment Design has an estimated construction cost of \$72 million. The key is it is extremely sophisticated from a process and hydraulics standpoint. Workshops will be conducted to make sure Operations, Engineering and the engineer are on the same page. Additionally, this project supplies the ability for electrical supply for the future Southerly Tunnel Dewatering Pump Station.

The Easterly Chemical High-Rate Treatment project will go out for bids in about a year for a \$125 million construction cost. However, the project has concerns locally in the City of Bratenahl. The concerns were voiced by the mayor and constituents about the view from Lakeshore. Staff has found ways to engineer the location to nestle the building behind existing facilities, taking the concerns into consideration as another benefit of the project.

Mr. Bunsey explained that the Westerly Storage Tunnel Dewatering Pump Station will go out for bids in approximately about a year for a \$170 million construction cost. Significant predesign activities occurred during the last few months. The tunnel will be situated in an elevation that

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will be completely in rock, reducing risk. The type of pump station itself has been determined and the layout of the pump station its alignment has been set.

Moving to construction, Mr. Bunsey stated that the Euclid Creek Pump Station Lakeshore Boulevard Relief Sewer Project was completed within the 95% KPI at 93.3% total amount spent. The same project had very good participation in terms of the Business Opportunity Program, at 6.5% higher at than goal.

Work orders as a function of the construction cost was 5.9%. Mr. Bunsey indicated that he prefers that figure to be below 5%, but about \$250,000 of changes occurred due to additional ADA ramps that were necessary because of deterioration of equipment on the streets at the owner's request.

The Southerly Non-Potable Water Pumps Project was completed at 94% of contract value. Business Opportunity Program participation was extremely good; the contractor was able to have a BOP subcontractor do all of the electrical installation, reaching 45% participation.

The Pump Rehabilitation Project work orders as a function of construction were very good at 3.3%.

The Southerly First Stage Improvements project had been lagging behind and was one of three projects causing cash flow to be down. The project deficit and cash flow was reduced from \$8.6 million to \$6.7 million last month. The project remains about two months behind schedule and is only 40% complete.

Mr. Bunsey advised that all the shafts except for Dugway Storage Tunnel are down to rock or below, greatly reducing the risk profile. This project had failures over the last eight months, but the subcontractor is completed with over 60 wells for the freezing around the perimeter of the shaft. They will hook up the cooling station shortly and within the next couple of weeks, will be put cold brine into it and start to freeze.

The Easterly Secondary Systems Improvements Project is on schedule and 65% completed. The east side of the secondary still remains out of service for connections during construction and is limiting operations staff and the ability of the plant to meet peak wet weather. However, the project is on schedule by the end of this year to reach 400 MGD capacity.

Concluding his report on the Tunnel Dewatering Pump Station, Mr. Bunsey stated that the locations for additional staff and workers have increased. The contractor has agreed with the owner that they are behind schedule by around 21 days, although District staff estimates the delay at around 60 days. He anticipated more change as the August completion date approaches.

VII. Open Session

Mr. Brown thanked CEO Ciaccia and staff for providing an overview of the Doan Valley Tunnel to several City of Cleveland department heads last week. The project will probably be a three-year impact to the community, so getting the department heads engaged to do what is necessary from a planning perspective was an important first step.

Mr. Brown further asked whether staff has heard anything from the community regarding the East 140<sup>th</sup> Street Project in East Cleveland. Constance Haqq, Director of Administration & External Affairs, advised that staff has been engaged with City of East Cleveland staff on a regular basis, including a meeting last night.

Mr. Brown requested keeping the Board abreast if things change along the way; he would rather know in advance rather than hearing from others.

VIII. Public Session (any subject matter)

There were no items.

IX. Executive Session

**MOTION** – Mayor Bacci moved to go into Executive Session to discuss a pending litigation with Administration and District counsel. After discussion and without objection, the motion carried unanimously following roll call vote.

The Board met in Executive Session from 1:05 p.m. to 1:32 p.m.

X. Approval of Items from Executive Session

There were no items.

IX. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Mr. O'Malley seconded the motion to adjourn at 1:32 p.m. Without objection, the motion carried unanimously.

  
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Walter O'Malley, Secretary  
Board of Trustees  
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Darnell Brown, President  
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