

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
JANUARY 21, 2010

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

I. Roll Call

PRESENT: G. Starr
D. DePiero
S. Kelly
T. Longo
W. O'Malley
R. Sulik

Mr. Brown was absent.

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

II. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. Sulik seconded that the minutes of the January 7, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia advised that no members from the public registered to speak at Public Session.

IV. Executive Director's Report

Executive Director Ciaccia requested that the Board consider entering into Executive Session at its appropriate time in order to discuss three personnel matters.

Executive Director Ciaccia moved to the first report item regarding the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP") and discussions held with the state and federal governments. On January 20th, District representatives met the governments, which Executive Director Ciaccia described to be a constructive and

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positive meeting. At said meeting, the District submitted an amended CSO LTCP, which was responsive to the governments' proposal. Executive Director Ciaccia indicated that we are getting closer on the technical aspects of the CSO LTCP and therefore felt it appropriate to schedule an Executive Session for the February 4th meeting in order to provide the Board with an update on some of those technical issues.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"), which is also a litigation matter. He thanked the Board for adopting Title V of *The Northeast Ohio Regional Sewer District Code of Regulations* (hereinafter "Code") in order to move forward with implementation of the SMP.

Summit County filed an action against the District which is pending in the Summit County Court of Common Pleas. This matter was assigned to Judge Teodosio who is a former president of the Summit County Council.

Summit County filed a Motion for Temporary Restraining Order (hereinafter "TRO") to prevent the Board from taking action on the SMP, and Judge Teodosio assigned this matter to a magistrate who did not act on the TRO prior to the Board's action at the January 7th meeting. Since the Board has now taken action, the District indicated with their attorneys "that our intention is not to put the program, from a construction and fee standpoint, in place before July of this year, and that there was no need to issue that restraining order at this time." The TRO remains on hold and the District filed a Motion to Dismiss the Summit County complaint as well as a Motion to Change the Venue to Cuyahoga County Court of Common Pleas since this court has jurisdiction over the District as a Ohio Revised Code (hereinafter "ORC") §6119 utility.

Summit County is to file their Brief in Opposition to the District's Motion to Dismiss by Friday, January 22, 2010. The District intends requesting Summit County's attorneys join the District in a Motion for a Joint Hearing, which they may not agree to; however, the District will request a hearing on the Motion to Dismiss and the Motion to Change the Venue. Executive Director Ciaccia speculated that the District will most likely be in Summit County Court within the next couple of weeks in order to address these issues.

Executive Director Ciaccia advised that immediately following the action taken at the January 7th Board meeting, "the District filed a Complaint for Declaratory Relief and, in the alternative, a Petition for Order Permitting Amendment to Petition of the Cuyahoga County Court of Common Pleas, asking the Court to issue Declaratory Judgment that the District has authority to fully implement the SMP." This matter was assigned to Judge Timothy McMonagle, the nephew of Judge George McMonagle, who was responsible for establishing the District.

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Executive Director Ciaccia advised that a Case Management Conference is scheduled for February 12th. Correspondence has been sent to the communities advising that the District is not taking adversarial action, and that communities are welcome to engage with the District as we move forward in this process.

Executive Director Ciaccia advised that the outstanding issues that the District continues working through include the SMP Credit Program, the City of Cleveland Division of Water (hereinafter "CWD") billing system, and customer service.

Executive Director Ciaccia moved to the next report item regarding the Small Business Enterprise (hereinafter "SBE") program. NERA Economic Consulting (hereinafter "NERA") continues obtaining disparity study related data, and has obtained 93 responses from a total 263 prime contractors, which is 40% of the overall contract dollars. To have a good survey, the District must obtain at least 50% responses, which may require the District's involvement in order to facilitate and obtain additional responses from some of those prime contractors.

Executive Director Ciaccia advised that the NERA schedule "slipped a little," but we are preparing a final draft and disparity study reports which will be available sometime between April and May of 2010.

Executive Director Ciaccia stated the results of the disparity study will be analyzed in order to determine if the current SBE program should be modified. Meanwhile, there are currently 563 SBEs certified with the District.

Executive Director Ciaccia moved to the next report item regarding the District's finances. All of the numbers are not yet available as it relates to the 2009 fiscal year, but the District expects being under budget. Revenues lagged approximately 1% from the budgeted amount, which was expected given the current economic conditions. Expenses were about 2% under budget.

Executive Director Ciaccia moved to the next report item regarding a meeting held with the City of Strongsville (hereinafter "Strongsville") concerning the District's analysis of Strongsville's existing wastewater treatment facilities, which serves a portion of that community. The District provided an assessment of their findings. Executive Director Ciaccia wanted to inform the Board of this development, and that this issue will be further discussed in an Executive Session, should the District and Strongsville desire moving forward with this acquisition.

Executive Director Ciaccia moved to the next report item and he informed the Board that a Suburban Council of Governments (hereinafter "SCOG") meeting is scheduled for Thursday, January 28th. The purpose of said meeting is to hold an election for the

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appointment of a Board Trustee to fill Mayor Longo's seat, whose term expires on March 1, 2010. The deadline for trustee nominations is tomorrow. Thus far, the District received nominations for Mayor Jack Bacci of the Village of Cuyahoga Heights and Mayor Don Kuchta of the City of Macedonia.

This concluded Executive Director Ciaccia's report.

Mayor Starr turned discussion over to the Board, and he commented that "it is good news that we have 563 [SBE] companies certified; how many did we have before?" Contract Compliance Manager, Tiffany Jordan, replied that there were approximately 300 certified Minority Business Enterprises (hereinafter "MBE") and Women's Business Enterprises (hereinafter "WBE").

Executive Director Ciaccia advised that staff plans making a SBE program update presentation to the Board at the February 4th meeting and will provide statistics from the 2009 SBE program which began on June 1, 2009.

Mayor Starr referred to the categories of construction, engineering, goods and services and he advised that construction and engineering were up. Mayor Starr inquired if the District sought out the SBEs or if they sought us out. Ms. Jordan advised that both situations occurred and that business owners are aware of the District's SBE program. Ms. Jordan advised that through the Director of Administration and External Affairs, Constance Haqq, and her department, the District held various workshops, classes and seminars which informed them of our SBE program. Staff will identify whether companies participating in those workshops became certified SBEs with the District and if they are currently working on District projects.

Ms. Kelly inquired if the data that will provided to the Board will identify how many SBE firms are MBEs or WBEs. Ms. Jordan affirmed.

V. Action Items

Authorization to Enter Into Contract

Resolution No. 21-10

One Year Contract with Precision Analytical, Inc. for Laboratory Services (Organic/Inorganic Analyses) for 2010. Cost: \$30,000.00.

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Resolution No. 22-10

Two Year Requirement Contracts with Fisher Scientific and Jade Scientific for Laboratory Supplies. Cost: Not to Exceed \$166,247.57.

Resolution No. 23-10

Contract with Fox & Dole Technical Sales for the Purchase of Two (2) Effluent Monitoring Stations for Use at the Southerly and Westerly Wastewater Treatment Plants. Cost: \$48,644.00.

Resolution No. 24-10

Contract with Richard L. Bowen & Associates Inc. for Southerly Wastewater Treatment Center Maintenance Building Exterior Wall Panel Restoration (WPR-1). Cost: \$345,269.26.

MOTION – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution Nos. 21-10 through 24-10. Without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 25-10

\$250,000.00 Increase in Retainage and Time Extension for Contract 3436 with Marra Constructors, Inc. for the Westerly Interceptor Box Culvert Replacement (WIBCR).

Resolution No. 26-10

Final Adjusting Deduct Order for Contract No. 3491 with Jay Dee Contractors, Inc. for the Valley Belt Gravity Sewer (VBGS) Project. Cost: A Decrease in the Amount of \$1,085,370.73 Bringing the Total Contract Price to \$4,970,189.27.

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Resolution No. 27-10

Final Adjusting Deduct Order for Contract No. 09000761 with Marous Brothers Construction for the Big Creek Interceptor 3D Valley and Ardoyne Connection (BCI-3D-VAC) Project. Cost: A Decrease in the Amount of \$90,663.41 Bringing the Total Contract Price to \$505,021.59.

Resolution No. 28-10

Second Modification to Contract 09000828 with Hahn Loeser & Parks LLP as Special Counsel to the Board of Trustees. Cost: Contract Time Extension to March 31, 2010 and Authorization to Expend Funds, As Necessary, to Compensate Mr. White for Such Services Rendered on Behalf of the Board of Trustees.

Mayor Starr requested an explanation of Resolution No. 25-10.

Director of Engineering and Construction, Kellie Rotunno, advised that Resolution No. 25-10 requested authorization of a contract modification to Marra Constructors, Inc. for the Westerly Interceptor Box Culvert Replacement (hereinafter "WIBCR") project. The Board was previously informed of "a survey bust in the alignment of the pipe" for the WIBCR project. Staff from the Departments of Engineering and Construction and Law vigorously engaged the contractor to negotiate a compensatory arrangement for the error made. An agreement was reached between the District and contractor to modify the contract wherein the District would "retain \$250,000 from the current contract balance to offset any additional costs the District might incur resulting from maintenance of the structure that they proposed as a fix to compensate from the grade discrepancy."

Mayor Starr inquired as to how much this will delay the WIBCR project. Ms. Rotunno advised that it has delayed the project somewhat, but we are not yet outside of the contract completion date. However, this may consequently result in a modification to the contract completion date.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution Nos. 25-10 through 28-10. Without objection, the motion carried unanimously.

Authorization to Amend Resolution

Resolution No. 29-10

**Amend Resolution No. 350-00 to
Implement a Revised Investment Policy.**

Mr. Sulik requested Director of Finance, Jennifer Demmerle, to provide the Board with an overview of proposed changes made to the District's Investment Policy (hereinafter "IP").

Ms. Demmerle advised that the IP was last updated in September 2000 and since the ORC has been amended and the District wanted to reflect those changes into our IP. Eligible investments were modified to provide the District with the authority to invest in AA and AAA corporate rated bonds that mature in two years. We also added "commercial paper" which matures in 180 days. We extended the certificate of deposit maturity from 180 days to 365 days. The District previously had a benchmark of a 91-day Merrill Lynch Treasury Bill Index, which was changed to a blended benchmark to coincide with the District's investments and reflect its portfolio. The 91-day Merrill Lynch Treasury Bill Index will be used for investments less than one year; and the Merrill Lynch 1-3 Year Government Index benchmark will be used for any investments beyond that.

Mayor Starr inquired if the corporate bonds are S&P [Standard and Poor's] 500 companies. Ms. Demmerle replied that these bonds are in the government's Guaranteed Debt Program, which was established last year, and are backed by the U.S. Government should something happen to that company.

MOTION – Mayor DePiero moved and Mr. O'Malley seconded to adopt Resolution No. 29-10. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 30-10

**RFPs for Comprehensive Cost of Service
and Rate Design Study and Related
Studies.**

Resolution No. 31-10

**RFPs for Professional Services for Design
Construction, Administration and
Residential Engineering (CA/RE) for the
Westerly Electrical Infrastructure
Improvements (WEII).**

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Executive Director Ciaccia moved discussion to Resolution No. 30-10. The Comprehensive Costs of Service and Rate Design Study and Related Studies (hereinafter "Rate Study") will be used to determine sanitary sewage charges.

The District typically authorizes rates on a 5-year basis. A rate increase was effective this January and another will become effective next January. The next rate window is between 2012 and 2016, and this Rate Study will be used to determine the rates for that timeframe. Executive Director Ciaccia expects there to be much discussion and debate over the rate changes taking place through 2011, and that this Rate Study must be completed soon in order to determine our needs going forward.

According to Executive Director Ciaccia, the District is facing significant commitments as it relates to the CSO LTCP. The District has already reduced approximately 4 billion gallons of CSOs over the last 20 years and must continue with this endeavor. Some District projects are being designed to further reduce CSOs, and the District's negotiations with the state and federal governments about the duration of the CSO LTCP are ongoing. Executive Director Ciaccia stated that the CSO LTCP will be driven by our big capital needs going forward, and that most of the infrastructure will be new. Meanwhile, the District will also need to maintain its existing infrastructure.

Executive Director Ciaccia advised that he attended a meeting in Columbus on Tuesday, January 19th wherein a director from another wastewater agency, also affected by CSO commitments, indicated that "he fears that existing infrastructure is going to be foregone because of their commitment to the CSO LTCP." Executive Director Ciaccia advised that this is not an option for the District, and that we must continue maintaining our existing infrastructure regardless of whether we have construct new infrastructure, and this will have to be factored into our rate study.

Consumption is also a contributing factor to the Rate Study. We had projected consumption to fall by 2% during the last rate study but it actually fell by 3% over that period of time. Therefore, consumption will be included in the Rate Study since we must cover fixed costs; maintenance of existing infrastructure; operation and maintenance; and new infrastructure that will be necessary in order reduce CSOs. Executive Director Ciaccia stressed that we must to consider the impacts of reduced consumption.

Executive Director Ciaccia anticipates the rate increase to be "an average of 18% a year." Since this will be a significant increase, Executive Director Ciaccia suggested that we use this time and Rate Study to develop affordability programs for our customers who cannot afford increases. The City of Akron "is looking at programs equivalent to the HEAP [Home Energy Assistance Program] on the electric side" and that the District should do something similar.

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Executive Director Ciaccia suggested that we also examine our minimum charge of 1 MCF. At one time, both the District and CWD charged their customers a minimum of 1 MCF regardless of how much water was used, and this was needed in order to cover fixed costs. The CWD chose to move away from the minimum charge of 1 MCF and implemented a \$7.00 customer service charge and charged the first MCF based on the customer's usage. The District continues charging a minimum of 1 MCF, which has caused much confusion and anger amongst our customers. Executive Director Ciaccia stated that we will need to accomplish something similar; however, it will be difficult for the District to implement a "customer service" charge since CWD performs our customer service.

Executive Director Ciaccia commented that there are many issues to consider when establishing the new rate structure and that the Rate Study will be helpful in identifying the District's needs. It is necessary that the Rate Study be completed soon "so that we can present something to the Board in earnest at the beginning of 2011."

Mayor Starr commented that "one of the components obviously is the phrase 'unfunded mandates' and hopefully we will be able to get that word out to the ratepayers about the obligations we have from the federal government, and they are not funding it as they did back in the 1970s and 1980s."

Executive Director Ciaccia agreed and advised that the entire program was funded by the federal government during the 1970s and 1980s whereas at the moment "we were lucky enough to get \$10 million of the stimulus funding last year." Executive Director Ciaccia advised that the District may have the opportunity to receive additional stimulus funding from the federal government for the reason that funds may be reallocated since some of the State's projects were not ready. However, "this will not be enough to stave off double digit rate increases."

Mayor Starr commented that "we are going to be quite busy over the next year or so."

MOTION – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution Nos. 30-10 and 31-10. Without objection, the motion carried unanimously.

Authorization to Issue Request for Qualifications (RFQs)

Resolution No. 32-10

RFQs for Financial Advisory Services.

MOTION – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution No. 32-10. Without objection, the motion carried unanimously.

Discussion was turned over to Ms. Demmerle, and she advised that the Request for Qualifications (hereinafter “RFQs”) is to engage a financial advisor to assist the District with its debt issuance. The District anticipates going to the bond market at the end of 2010, and the financial advisor will help the District through this process including going to the rating agencies. The financial advisor will also facilitate with the Requests for Proposals (hereinafter “RFPs”) for selecting the underwriters and bond counsel.

Mayor Starr inquired if “this will be a law firm that we are seeking” wherein Ms. Demmerle explained that they will be financial advisors and that the bond counsel is usually the law firm.

Mayor DePiero inquired if the RFQs will be sent to local or national firms. Ms. Demmerle replied that “we have a mix of local and national firms” and that the RFQ will also be posted on the District’s website.

Authorization to Cancel Contract and to Rebid

Resolution No. 33-10

Cancel Contract No. 09001780 with Cleveland Plastic Fabricators & Suppliers, Inc. and Re-Bid with One Specified Material, Fiberglass Reinforced Plastic, for the Purchase of Three (3) 15,000 Gallon Ferric Chloride Tanks at the Southerly Wastewater Treatment Plant. Anticipated Expenditure: \$150,000.00.

MOTION – Ms. Kelly moved and Mr. O’Malley seconded to adopt Resolution No. 33-10. Without objection, the motion carried unanimously.

Mr. O’Malley requested an explanation of the cancelation of Contract No. 09001780, more specifically, was the contractor unable to make the product or just not able to deliver the contract on time. Director of Operations and Maintenance, Dave McNeeley advised that the distributor bid on something that the manufacturer could not supply.

Authorization to Advertise

Resolution No. 34-10

Two-Year Requirement Contract to Supply Treatment Chemicals and Monthly On-Site Testing/Service for District Boilers and Cooling Towers Located at Each Wastewater Treatment Plant and the George J. McMonagle Administration Building. Anticipated Expenditure: \$151,000.00.

MOTION – Mr. O’Malley moved and Mr. Sulik seconded to adopt Resolution No. 34-10. Without objection, the motion carried unanimously.

Resolution No. 35-10

Big Creek Interceptor 3D Lining Rehabilitation (BCI-3D-LR). Engineer’s Estimate: Option A: \$2,900,000.00; Option B: \$2,400,000.00.

Resolution No. 36-10

Early Procurement of Transformers for the Tunnel Dewatering Pump Station Electrical Substation. Engineer’s Opinion of Probable Construction Cost: \$1,100,000.00.

MOTION – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution Nos. 35-10 and 36-10. Without objection, the motion carried unanimously.

VI. Information Items

1. Executive Director’s 2009 Performance Annual Report, 2010 Performance Plan, and District’s Strategic Goals.

Executive Director Ciaccia advised that he had not planned on providing the Board with a formal presentation on his 2009 Performance Annual Report, 2010 Performance Plan and the District’s measurement against its Strategic Business Plan. The aforementioned reports were included in the Board packets, and Executive Director Ciaccia was willing to entertain any of the Board’s questions.

Executive Director Ciaccia indicated that it was a good year and he was pleased with the many accomplishments. He requested that the Board advise him if they would prefer any additional information that was not already included in his report.

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Executive Director Ciaccia advised that staff continues tracking information in order to determine its measurements against the Strategic Business Plan, and that “we are very serious and conscientious about staying on track.”

Mayor Starr inquired if there were any questions for Executive Director Ciaccia, and there were none. He advised that questions from the Board can be raised at its next meeting in order to provide the Board with additional time to thoroughly review the material.

2. 2008 Comprehensive Annual Financial Report.

Executive Director Ciaccia advised that included in the Board packets for review was the 2008 Comprehensive Annual Financial Report.

3. Program Management Status Report and Update – November 2009.

Ms. Rotunno advised that the update on the Capital Improvement Program (hereinafter “CIP”) is through November 2009 and that the fiscal year end report will be presented to the Board in February.

Ms. Rotunno moved discussion to the anticipated Board action and awards for CIP design, bid and construction projects. There was heavier activity on the design side than construction. The District issued RFPs for several design contracts and is currently evaluating those and expecting to come to the Board in March to request authorizations to enter into contract on those projects. There are fewer projects out for bid and a couple of projects that staff will recommend to the Board for authorization to enter into contract.

Ms. Rotunno moved discussion to the Key Performance Indicators (hereinafter “KPIs”), which is delivering 90% of the CIP, as planned. As of the end of November 2009, 41 Notices to Proceed (hereinafter “NTPs”) should have been awarded, however, the District awarded 27 (66%) of those.

Ms. Rotunno reported that there was a slight increase from October’s report, and that although the District is not meeting the KPI in terms of projects awarded, we expect to end 2009 at 37 awards compared to the initial plan of 49. In terms of dollar value, the District reached 58% of its goal at the end of November, which is a slight increase from October which was at 55%. Ms. Rotunno advised that the District is projected to exceed its year-end CIP metric goal of \$205 million at \$254 million. Ms. Rotunno summarized that the District is exceeding this KPI as it pertains to dollar values, but not quite meeting the number of projects.

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Ms. Rotunno referred to a pie chart depicting significant SBE commitments made in 2009, and she indicated that she was pleased with the SBE participation thus far. Since the program's inception, and only six months of the SBE program underway, the percentage of SBE participation for professional services awarded in 2009 was 18% and 12.6% for construction projects. Ms. Rotunno commented that this "demonstrates a good step in the right direction toward getting our SBEs engaged in our Capital Program."

Ms. Rotunno advised that the District is awarding its projects within 10% of the engineer's opinion of probable construction costs, and on the aggregate, we are awarding them about 7% below the engineer's opinion of probable construction costs.

Ms. Rotunno moved discussion to contract close outs and she advised that nine out of ten projects are closed within less than 5% change orders. The Board just passed two resolutions to modify and close out two construction contracts less than the base contract amount. Those projects will be included in the year-end report. Ms. Rotunno commented that "this metric is only going to get better" as we move toward the end of 2009 and "we are going in the right direction."

Ms. Rotunno moved discussion to the management of construction allowances in the field. General allowances are authorized by the Executive Director, and specific allowances are authorized by the Director of Engineering and Construction. As of November 2009, less than \$1 million of the \$7.1 million of general allowances and \$655,000 of the \$2.9 million of specific allowances has been authorized

Ms. Rotunno explained that "projects closed out as of November 30, 2009, were closed out at approximately 98.2% of the base contract price, and that excludes the general allowance." Essentially, the District is managing its contracts to less than the base contract amount and that some of the line items were either non-performed or we were not fully using specific allowances. Ms. Rotunno was happy to report that "we are judiciously managing our construction projects."

Ms. Rotunno concluded by referring to an 11" x 17" pullout, which was provided to the Board, listing the MBE, WBE and SBE participation on closed out and ongoing District projects.

Mayor DePiero commended Ms. Rotunno and staff for their good work. He inquired about the \$254 million, which represented 58% of the District's goal. He questioned as to over how many years that money will be spent, or if it has already been spent. Ms. Rotunno replied that \$254 million is an award base number, which was awarded in 2009. It is not the cash-flow that we expect paying out. Executive Director Ciaccia added that "as we continue to award this level of contracts, we will certainly be spending at a cash-

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flow far greater than what we currently are.” In order to keep up with our CSO LTCP obligations, the District expects spending approximately \$250,000 annually.

Mayor DePiero inquired if the District is projecting to spend somewhere in the range of \$250 million to \$300 million in 2010. Ms. Rotunno affirmed somewhere in that range, and explained this supports the need for the District going back to the bond market and engaging a financial advisor.

Mayor DePiero questioned if the Board will “need to start meeting every week to get all these contracts passed?” Ms. Rotunno did not believe so, and she advised that the Board “did a lot of heavy lifting toward the end of 2009.” In the first part of 2010, the emphasis will be placed on the design contracts, and there will also be a few construction contracts.

Mayor Longo referred to the MBE, WBE and SBE graphic. He inquired if the SBE data could be broken down to show what percentage of those were MBE or WBE firms, and he questioned, “They are not all synonymous, are they?”

Ms. Rotunno stated that the MBE and WBE data represented contracts that were awarded under the former MBE/WBE program, and that those terms are exclusively used for those particular contracts.

Mayor Longo questioned if “as of June, it switched over to small business?” Ms. Rotunno affirmed. She explained that it took several months for the District to track the SBE goals into the program. As 2010 proceeds, the SBE section depicted in green will increase, and the MBE/WBE sections represented in dark blue will decrease as we close out some of our legacy projects.

Mayor Longo inquired if large MBE and WBE firms not considered small businesses will no longer be tracked on District projects under the SBE program. Ms. Rotunno stated that if an MBE does not qualify as a SBE, then their dollars would not be tracked in the SBE data.

Mayor Longo inquired if “on one side of the equation under the old method that they are part of the equation, under the new direction that we are going, they are not part of it, depending on the definition?” Executive Director Ciaccia stated that use of uncertified SBE firms will not apply towards our SBE participation goals, however, we still account for the dollars spent on MBE and WBE firms on District projects. Staff is planning to go into greater detail on this issue during the SBE update which will be presented to the Board at its February 4th meeting.

Mayor Longo inquired if “we are responsible as we go into the SBE program for reporting or accounting for WBE and MBE?” Executive Director Ciaccia stated that “we are certainly not responsible.” Mayor Longo questioned “to any other agency?”

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Executive Director Ciaccia replied that under some of the federal and state loans that we receive. Ms. Rotunno stated that this introduces the DBE [Disadvantaged Business Enterprise] requirements which are under the federal government and that some of the MBEs, WBEs and SBEs qualify as DBE and some do not, but this is a separate accounting exercise.

Ms. Kelly inquired if the District is required to use MBE and WBE requirements on stimulus funded projects. Executive Director Ciaccia affirmed. Ms. Kelly inquired if "that would be part of our goal?" Executive Director Ciaccia replied that to the extent MBEs or WBEs are also SBEs, then this would count toward the District's SBE participation goals. Conversely, participation from companies like Ozanne Construction, which is a MBE firm but too large to qualify as a SBE firm, would be reported to the federal agency regulating the stimulus money, but would not count toward the District's internal SBE program. Ms. Rotunno added that stimulus funded projects would be required to follow the DBE program wherein we are obligated to meet the DBE definition, and this is carried by the federal regulations governing said funding. The DBE classification typically includes MBEs and WBEs, but it is a separate reporting mechanism for the funding but not necessarily captured in the CIP report that staff presents to the Board. Ms. Jordan can provide the Board with various types of MBE, WBE or SBE data.

Ms. Kelly inquired if upon completion of the disparity study "it is determined that we need to go back to the MBE/WBE program, what will happen to the SBE program?" Director of Law, Marlene Sundheimer, replied that the disparity study will indicate whether there will be a basis for an MBE or WBE program, but the SBE program will continue. If the statistics support implementation of an MBE or WBE program, then there would be two separate programs and individual MBE/WBE goals or SBE goals would be established on a contract-by-contract basis.

Ms. Kelly inquired how the participation would apply to contractors that are certified SBEs and also an MBE or WBE. Ms. Sundheimer replied that SBE certified vendors or subcontractors could be eligible for participation as SBE or MBE or WBE depending upon their status, and in this event, they would have more than one designation.

Executive Director Ciaccia explained that depending on the disparity study's outcome, there are ways to reengineer the SBE program. If the study evidences disparity or discrimination of MBEs or WBEs in all categories of work we do, then it may become an MBE/WBE program as it relates to that type of work. Disparity may be evidenced for engineering projects, and we would be required to create a program for that type of work. For example, in the City of Cleveland, no disparity was found for their underground work and therefore their SBE program and goals are for underground work whereas a MBE/WBE program and goals are necessary for above-ground work. The District's

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program will be reengineered to coincide with the disparity study's results. It is conceivable that we may not have an SBE program altogether as long as the disparity study supports only having an MBE/WBE program.

VII. Open Session

There were no items for discussion.

VIII. Public Session (any subject matter)

No items for discussion.

IX. Executive Session

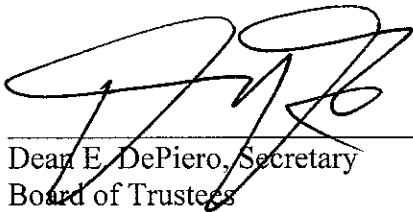
Mayor Starr stated that there were matters for discussion in Executive Session.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to enter into Executive Session to consider issues of compensation and promotions of District employees, 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 without objection, the motion carried unanimously.

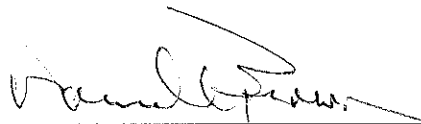
The Board met in Executive Session from 1:23 p.m. to 1:38 p.m.

X. Adjournment

MOTION – Mayor Starr stated business having been concluded, he would entertain a motion to adjourn. Mayor DePiero moved and Mr. Sulik seconded the motion to adjourn at 1:39 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
Northeast Ohio Regional Sewer District