

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

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  
W. O'Malley  
G. Starr

ABSENT: S. Kelly

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

II. Approval of Minutes

**MOTION** – Mr. Sulik moved and Mr. O'Malley seconded that the minutes of the February 2, 2012 Board meeting be approved. Without objection, the motion carried unanimously.

III. Acknowledgment of Mayor DePiero's Years of Service to the Board

Mr. Brown stated that the Board wanted to acknowledge and show its appreciation to Mayor DePiero who is attending his last official meeting as a Trustee to this Board. Mayor DePiero served as a Trustee for five (5) years. Mr. Brown commented that those were five exciting years which involved large issues that framed the governance and management of the District presently as well as into the future. Mr. Brown commended Mayor DePiero on the knowledge, intellect and stability that he brought to this Board as well as the input and insight he provided. Mr. Brown stated that Mayor DePiero will be missed by this Board.

Resolution No. 51-12

Resolution of acknowledgment and appreciation to Dean DePiero in recognition of his five years of outstanding service and noteworthy contributions to the Northeast Ohio Regional Sewer District.

**MOTION** – After discussion, Mayor Starr moved and Mr. Sulik seconded to add and adopt Resolution No. 51-12. Without objection, the motion carried unanimously.

Mr. Brown presented Mayor DePiero with Resolution No. 51-12 and stated that Mayor DePiero “served on this Board during a time of major transition during which the District changed leadership and entered into a new era of transparency and public scrutiny, resulting in a new Executive Director, Bylaws revisions, new *Code of Ethics and Conduct*, and new contracting guidelines.”

Mr. Brown commented that although this work was not easily done, it was well-done. On behalf of the Board Mr. Brown congratulated Mayor DePiero on a successful completion of term and wished Mayor DePiero the best in his future endeavors.

Mayor DePiero thanked the Board for Resolution No. 51-12 and stated that in his 17 years of elective office as councilman, legislator, mayor and Board member, he worked with many good people. Mayor DePiero stated that he was impressed with the team here at the District and especially with Executive Director Ciaccia and his senior staff. Mayor DePiero commented that the District is a “team effort” and that “as a team you can do so much.”

Mayor DePiero commented that many good things transpired at the District and that he will consider his years of service as a Trustee to this Board as one of his “crowning achievements” in his public life. Mayor DePiero indicated that he was “proud to be part of group that brought stability back to this great organization” and that he looks forward to being a champion for clean water in this area. Mayor DePiero thanked his fellow colleagues on the Board and he stated that a lot of good work has been done. Mayor DePiero concluded by thanking District staff.

#### VI. Public Session

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

#### V. Executive Director’s Report

Executive Director Ciaccia moved to the first report item regarding the Stormwater Management Program (hereinafter “SMP”) litigation matter. Judge Pokorny issued a

favorable ruling in this matter on February 15, 2012. Executive Director Ciaccia summarized some of the key points in Judge Pokorny's 20-page ruling.

In the last paragraph on page 1, Judge Pokorny reaffirmed that the District has the authority to "address the intercommunity flooding, erosion and stormwater-related water quality issues."

On the top of page 9 Judge Pokorny states that "based upon the foregoing analysis, the Court finds the District is authorized by Chapter 6119, and not otherwise restricted by its charter, to charge property owners of member communities a stormwater fee to finance Title V." Executive Director Ciaccia clarified that the District therefore has the authority to carry out the SMP as well as charge a stormwater fee.

The issues argued by the defendants are addressed on page 11. One issue was whether the stormwater fee was considered a tax or a fee for services. In his ruling, Judge Pokorny states that "The court, based upon the foregoing finds that the charges proposed in Title V are charges authorized by R.C. 6119.09 and not an unlawful imposition of tax by the Regional Sewer District."

Under the first paragraph on page 16, Judge Pokorny ruled that "...the Court finds the fee is not arbitrary, capricious or unreasonable." Under the same paragraph, Judge Pokorny ruled that "...the court finds no rational basis for the disparate treatment of non-residential property owners." Executive Director Ciaccia referred to the three-tier system which was used to calculate stormwater fees for residential properties based on property size and that a similar tier system was not placed on non-residential properties. Executive Director Ciaccia clarified that the argument was that the District capped the residential properties but failed to cap commercial properties. Executive Director Ciaccia explained that Judge Pokorny plans to revisit this issue with the District and the other parties involved in the SMP litigation matter.

Executive Director Ciaccia referred to the section pertaining to the District's proposed SMP credits. On page 17, Judge Pokorny ruled that "...the fee credit system is a rational way to advance a legitimate governmental interest and is not otherwise arbitrary, capricious or unreasonable."

In the following paragraph on page 17, Judge Pokorny ruled that "the District shall provide the school systems with appropriate curriculum for each of grades 1-12 to achieve the stated purposes of the credit." Executive Director Ciaccia agreed that this was appropriate and that he did not anticipate this responsibility to place a burden on the District.

In the following paragraph on page 17, Judge Pokorny ruled that there are certain engineering costs involved in applying for a credit specifically for large commercial and industrial customers and that a credit should be issued to cover some of those costs.

On page 19 under the section entitled "Exemptions," Judge Pokorny ruled that "The court finds that the District's exemptions are reasonable, that there is a rational basis for exempting public roads, and airport runways and taxiways as they serve the public generally and provide drainage themselves."

Judge Pokorny previously ruled that some Summit County communities were not member communities of the District and Hudson was included in that group. The District discovered additional information with respect to Hudson's status as a member community and presented said information to the Court. Judge Pokorny essentially reversed his former decision as it relates to Hudson and now Hudson is indeed considered a member community. Consequently, portions of Hudson that are in the service area will be included in the SMP.

On page 20 in the concluding paragraph, Judge Pokorny states that the Court will schedule a conference within 30 days to hear the three remaining items.

Executive Director Ciaccia referred back to a very important point with respect to community cost-share. Judge Pokorny went through some detail to determine what he believed to be a fair community cost-share percentage. The District proposed 7.5% community cost-share whereas Judge Pokorny proposed a 25% community cost-share. This issue is unresolved.

The District will work on the remaining items listed in the concluding paragraph on page 20 including:

- 1) the creation of a non-residential cap or sliding scale;
- 2) the creation of a plan or formula to establish an engineering costs credit; and
- 3) an alternative cost share formula.

In the meantime, the District will continue to work with some of the intervening parties with respect to settlement discussions. Executive Director Ciaccia noted that an Executive Session will be held today in order to discuss settlement and strategies as it pertains to the three outstanding issues listed in Judge Pokorny's ruling.

Executive Director Ciaccia stated that Judge Pokorny's ruling reaffirms the District's initial legal stance on the SMP matter.

Executive Director Ciaccia congratulated the District's internal legal staff and the Calfee team for carrying forward this case.

Executive Director Ciaccia moved to the next report item regarding the KMM&K litigation matter with respect to the Mill Creek Tunnel (MCT) project. A pretrial conference was held with Judge O'Donnell on February 7, 2012. A trial date was scheduled for October 15, 2012 and a series of submission deadlines were made. A reconvening of mediation is scheduled for February 27, 2012. The District plans to attend said mediation and intends to aggressively mediate this matter in hopes of reaching a settlement and avoiding a very long, complicated and drawn-out trial.

Executive Director Ciaccia moved to the next report item regarding the 3320 Woodland litigation matter. Trial is scheduled for July 9, 2012. The District is working towards settlement with the three defendants in this matter and those were presented to the Board during a previous Executive Session.

Executive Director Ciaccia moved to the final report item regarding the District's financial information which was included in the Board members' packets.

The revenues projected for 2012 are \$189,169,080.00. This amount was derived from the District's rate study for the years 2012 through 2016. Executive Director Ciaccia stated that "we did back out about \$1.6 million from what was in the rate study...the \$1.6 million being the new agreement we entered into with the Department of Environmental Services of Summit County."

Executive Director Ciaccia indicated that the District revised its projected revenues to \$180,900,000.00. The revision was based upon numbers the District received from its billing agent, City of Cleveland, Division of Water (hereinafter "CWD"). Additional consumption loss was experienced, which was not anticipated in the District's rate study. Both the District and CWD projected a 3% reduction in consumption but the actual amount of decreased consumption is more likely to be 6%.

Executive Director Ciaccia indicated that the amount billed so far was 8% of the revised revenue amount of \$180,900,000.00, which is on target but less than what was originally projected. Executive Director Ciaccia explained that the revised amount of \$180,900,000.00 will be used for 2012 budgeting purposes.

Executive Director Ciaccia moved to District expenses and he stated that the preliminary budget is \$101,500,000.00 and that \$5 million has been spent in 2012 which is 5.7%. The District is tracking under 8% on the expense side, which will need to continue given the decreased revenue projections. Executive Director Ciaccia noted that short-term management of operations and maintenance expenses will be extremely important and

that long-term the District must consider consumption. If consumption continues to decline, then the District may need to ratchet back its Capital Improvement Program (hereinafter "CIP") or issue less debt in order to keep its debt service down. Executive Director Ciaccia noted that it is manageable and that at this point the District is taking a more conservative approach.

Mayor Starr inquired as to the reasons for the decrease in consumption. Executive Director Ciaccia explained that the District has not gotten too far into its consumption analysis but determining the reasons for the decrease in consumption is a significant issue to be explored. The impacts on consumption for 2012 have yet to be determined.

Mayor Starr inquired whether Executive Director Ciaccia could speculate as to the impacts on consumption. Executive Director Ciaccia stated that the economy has certainly impacted consumption.

Executive Director Ciaccia stated that 2% to 3% has been the normal rate of consumption decline over the last few years and the District speculated that trend would continue in to 2012, which may very well be the case, but this was not the case in 2011. The District has therefore opted to remain conservative and project a 6% decrease in consumption for the purposes of its 2012 budget.

Mayor Starr questioned as to when the rate increases will be reflected in the bills wherein Executive Director Ciaccia replied this month.

Mayor Starr questioned, "When do they start collecting on that?" Executive Director Ciaccia replied immediately.

Executive Director Ciaccia explained that he examined the collection rates and that 98% of the amounts billed are being collected.

Mayor Starr referred to the District's affordability programs and he inquired how those impact the District. Director of Finance, Jennifer Demmerle, replied that the District projected a 2% decrease in revenues resulting from the affordability programs.

Mayor Starr questioned if the 2% loss resulting from affordability programs was not included in the 3% loss of consumption. Ms. Demmerle affirmed.

Mr. Brown requested that District staff explore certain areas with respect to loss of consumption including the reduction in the average size of households which has decreased over the last 10 years and low-flow devices being inserted in new construction and rehabilitated homes. Executive Director Ciaccia indicated that the District will be

looking into the variables impacting consumption and will also work with CWD since it has the same concerns.

Executive Director Ciaccia added that the decrease in consumption supports moving away from a consumption-based rate model and that a fixed-cost recovery charge is more likely to stabilize the revenues and be more equitable.

VI. Action Items

Authorization to Advertise

Resolution No. 34-12                      Two (2) year laboratory bottles requirement contract.      Anticipated expenditure: \$39,300.00.

Resolution No. 35-12                      Two (2) year laboratory chemicals requirement contract: BOD-COD chemicals, standards, and supplies. Anticipated expenditure: \$42,000.00.

**MOTION** – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution Nos. 34-12 and 35-12. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 36-12                      RFPs for the purchase of an Automated Solid Phase Extractor for oil and grease approved for use with EPA method 1664A. Anticipated expenditure: \$40,000.00.

Resolution No. 37-12                      RFPs for Stormwater Master Plan Standards Development and Pilot Project.

Resolution No. 38-12                      RFPs for purchase of an Inductively Coupled Plasma Spectrometer for metals analysis.      Anticipated expenditure: \$90,000.00.

**MOTION** – Mayor Starr moved and Mr. Sulik seconded to adopt Resolution Nos. 36-12 through 38-12. After discussion and without objection, the motion carried unanimously.

Mr. Brown requested an explanation on Resolution No. 37-12.

Executive Director Ciaccia explained that the District will engage in master planning of the various stormwater projects and the development of watersheds. This effort is to develop the standards of the program. Executive Director Ciaccia turned discussion over to Director of Engineering and Construction, Kellie Rotunno.

Ms. Rotunno explained that Phase I involves procuring professional engineering services to develop stormwater master plan standards, which will be the standards applied to all stormwater master planning across the service area to include mapping, how the District will prioritize across the service area and within each watershed as well as the deployment and maintenance of the construction.

Phase II will be the deployment of those standards in the pilot project for the Abram Creek watershed to determine which standards fit, deployment of those standards and to make any necessary adjustments prior to applying those across the service area.

Ms. Rotunno noted that it will be a two-phase professional services contract.

Authorization to Enter Into Agreement

Resolution No. 39-12	Three (3) year agreement to provide analytical testing services to the Cuyahoga County Board of Health.
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**MOTION** – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution No. 39-12. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 40-12	Contract to provide analytical testing services as a sub consultant with AECOM Technical Services, Inc., a consultant for the City of Akron.
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Resolution No. 41-12	Two (2) year requirement contract with Nalco Company to provide boiler treatment and cooling tower service at all District facilities. Cost: \$120,070.65.
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- Resolution No. 42-12                      One (1) year contract with Middough, Inc. for Human Machine Interface 2 (HMI-2) project. Cost: \$1,250,500.00.
- Resolution No. 43-12                      Two (2) year contract with Strand Associates for Green Infrastructure Design Services project. Cost: \$3,964,600.00.
- Resolution No. 44-12                      One (1) year contract with LABLynx, Inc. for the annual maintenance and support of the laboratory and pretreatment information system. Cost: \$30,000.00.
- Resolution No. 45-12                      Three (3) year contract with Netech Corporation under State Term Contract STS-033 533110-3 for the renewal of the Cisco SmartNet maintenance contract for all Cisco hardware in the business network and the process control network. Cost not-to-exceed \$310,556.00.
- Resolution No. 46-12                      One (1) year contract with Noetix Corporation for the annual software maintenance and support of Noetix reporting software. Cost: \$37,500.00.

**MOTION** – Mayor DePiero moved and Mayor Bacci seconded to adopt Resolution Nos. 40-12 through 46-12. After discussion and without objection, the motion carried unanimously.

Mr. Brown requested an explanation on Resolution No. 42-12 for the Human Machine Interface (HMI-2) project.

Ms. Rotunno explained that the HMI-2 is a “window into the machine” which allows the Wastewater Treatment Plant (WWTP) operators to view the various internal components of the machines in order to determine which pumps and valves are operating and the pressures and temperatures of each tank. The HMI-2 enables the WWTP operators to make informed decisions about the internal mechanics of a machine.

Mr. Brown requested an explanation on Resolution No. 43-12 for the Green Infrastructure Design Services project.

Ms. Rotunno stated that this is next phase in the District’s Green Infrastructure program.

The last phase was to develop the green infrastructure plan which was to be filed with the government by December 31, 2011. The District must select projects which will capture 44 million gallons of CSOs.

Resolution No. 43-12 is for the further refining and planning efforts to narrow down the 44 million gallons which includes design and some early action projects for 2012 and 2013. Ms. Rotunno noted that all green infrastructure projects must be implemented in eight years, which she explained to be a very aggressive timeline.

Ms. Rotunno advised that members from Strand and Associates were in attendance at the meeting. Ms. Rotunno noted that Strand and Associates and its subcontracting team previously performed green infrastructure projects on CSO matters for the City of Cincinnati and Northern Kentucky Sanitation District Number 1 and will be bringing its expertise to Cleveland.

Mayor Starr noted that there is \$42 million for green infrastructure and he questioned as to the amount allocated towards gray infrastructure. Ms. Rotunno replied \$3 billion.

Mayor Starr inquired if the percentage of green infrastructure versus gray infrastructure is low compare to other metropolitan areas throughout the United States. Mayor Starr advised that a Shaker Heights resident has contacted him and has questioned as to why the District is not completing more green infrastructure projects.

Ms. Rotunno explained that as a compliance requirement under the consent decree, the District is mandated to capture 44 million gallons of CSOs through green infrastructure in addition to the amount of CSOs to be captured through gray infrastructure. The plan is a "gray plus green solution" and the governments did not allow for the District to replace any gray infrastructure with green infrastructure under Appendix 3.

Ms. Rotunno noted that under Appendix 4, the District is provided with the opportunity to trade green for gray infrastructure. The District plans using green infrastructure where feasible in order to achieve an equivalent level of control that is not only cost-effective but also beneficial to the socioeconomics of this region. Ms. Rotunno further stated that the District will examine each gray project to determine where green infrastructure can be used moving forward.

Mayor Starr inquired whether \$42 million was a low estimate and if increased education and experience could increase that amount. Ms. Rotunno indicated that the District fully expects that number to increase significantly over the 25-year consent decree period.

Executive Director Ciaccia added that the District is taking a more measured approach to green infrastructure by determining what can be done prior to making any further

commitments to the governments. Furthermore, many wastewater management systems are attempting to insert language similar to that of the District's into their consent orders.

Mr. Brown inquired whether the District is one of the first agencies to incorporate green infrastructure into its consent order. Ms. Rotunno replied that the District is one of the first agencies to have green infrastructure federally recognized within its consent decree.

Executive Director Ciaccia explained that Philadelphia is in the process of negotiating its consent order and has proposed to use 100% green infrastructure to get them down to six billion gallons of CSOs in a typical year, which is a long way to go. Executive Director Ciaccia noted that the District has already made plenty of investments and has come a long way in mitigating its CSOs.

Executive Director Ciaccia referred to Resolution Nos. 39-12 and 40-12 to enter into agreements with the Cuyahoga County Board of Health and the City of Akron. Executive Director Ciaccia commended Manager of Analytical Services, Mark Citriglia, and his staff for responding to the RFP which ultimately resulted in the District winning the contract. Executive Director Ciaccia stated that it is a good example of shared services throughout the region. Executive Director Ciaccia noted that the data being analyzed will be applied towards Akron's consent order negotiations.

Mr. Brown commented that the District was cheaper than the marketplace. Executive Director Ciaccia replied in this instance, but the District lost a bid not too long ago.

#### Authorization to Enter Into Contract and Modify Agreement

Resolution No. 47-12

Enter into contract with Mark Haynes Construction, Inc., for West Creek Confluence Site Restoration and Stormwater Improvement Project/Design-Build Contract; and modify agreement (District Contract No. 2525) with the West Creek Preservation Committee. Design-Build Contract Cost: \$2,410,300.00.

**MOTION** – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution No. 47-12. After discussion and without objection, the motion carried unanimously.

Mr. Brown inquired about the design-build process. Executive Director Ciaccia explained that this is the District's first design-build project. A change in state law allows for the District to use the design-build method which is beneficial to the District especially with respect to stream restoration projects. Executive Director Ciaccia turned

discussion over to Ms. Rotunno.

Ms. Rotunno explained that House Bill 153 included changes to the Ohio Revised Code (ORC) section related to construction reform in the authorization of public entities to utilize design-build project delivery methods. Consequently, the District analyzed which types of projects would benefit most from the design-build method.

There are two ways to deliver construction projects: the traditional design, bid and build approach and the design-build approach. Ms. Rotunno explained that she will discuss the differences between those two methods.

The traditional design, bid and build method involves two separate contracts: one with the designer and one with the contractor. Each has their own subcontractors and sub-consultants. Typical delivery approach consists of defining the project, establishing a budget, selecting the designer, bidding and then construction discussion.

The design-build method results in the District holding one contract with the design builder who then holds a subcontract with a designer as well as a construction contractor. The process eliminates the bid phase by combining the design and construction into a single phase.

Ms. Rotunno noted the benefits to the design-build method. This process allows for the District to collaborate early and produce an accelerated procurement and delivery schedule. It is a streamlined procurement approach which enables the District to focus on qualifications as well as taking cost into consideration. With respect to stream restoration projects, the design-build method is extremely beneficial because the design is dynamic and can be modified going forward. Typical natural system projects result in adjustments being made during construction and therefore the need for a change order mechanism is unnecessary through the design-build approach.

Ms. Rotunno moved discussion to the design-build procurement process for this particular project. The project concept was initially developed and then staff requested from the Board an authorization to issue RFPs. The District issued RFPs whereby professional services and contractor providing firms responded. Those proposals were evaluated and interviews were conducted. The District selected a design-build firm based on qualifications and fees. The contract was negotiated and now staff is requesting Board authorization to enter into a design-build contract.

Ms. Rotunno indicated that she wanted to clarify a couple of nuances with respect to said contract. A diverse selection committee reviewed and scored the teams based on their qualifications, understanding of the project, capacity and performance. A short list of interviewees was developed. The interviewing process had different categories for

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ranking each team which included qualifications of the teams' overall knowledge, understanding and responses to the questions posed by the District. Pricing was also taken into consideration during the evaluation process.

Ms. Rotunno explained the three cost components. The firms were requested to submit a pre-consumption lump sum that includes a list of items required for the project. The general conditions lump sum is the amount the contractor would deploy during the construction phase of the project. Their fee percentage of the construction costs was submitted with the proposal.

The District will move forward with the development of 60% of the design. After 60% of the design is complete, then the District will negotiate a guaranteed maximum price (GMP) with the firm. Assuming a GMP is reached, the District will then bring that amount to the Board for consideration, which would result in an amendment to the agreement. Ms. Rotunno noted that "it is not increasing the amount; it will be refining it and locking it in." The District would then move to complete the design and construct the project.

Ms. Rotunno explained that in the event the District reaches 60% design completion and a GMP is not reached, then the District would proceed to complete the design using the traditional approach including bidding and then constructing the project.

Ms. Rotunno summarized discussion by stating that entering into the contract would enable the District to reach the 60% design milestone. The GMP is negotiated and if the District is satisfied with said amount, then staff will present the GMP to the Board for consideration and the authorization to amend the agreement. In the event a GMP cannot be reached, then the District will proceed with its traditional contracting process which includes, design, bid and construction. There are three cost components in the proposal at the time the project is initiated. A significant portion of the project is undefined and will be negotiated at the 60% design phase of the contract. Ms. Rotunno noted that the GMP will also include specific and general allowances.

Ms. Rotunno moved discussion to provide the Board with an overview of the first design-build project which is the West Creek stream restoration located in Independence. The purpose of said project is to stabilize and rehabilitate about 1,000 feet of stream. The stream runs straight and the project includes constructing a radius which would make it more consistent with the stream's natural flow. The project will also include restoring the floodplain.

This project is fully reimbursed under the Water Resource Restoration Sponsor Program (WRRSP). The Ohio EPA supports water restoration where a portion of the interest rate for the Water Pollution Control Loan Fund is used for those types of projects. Ms.

Rotunno noted that the total funding amount for this project is \$2.4 million of which \$2.07 is a WRRSP grant and \$335,300.00 is a Section 319 grant.

Ms. Rotunno explained that as part of the resolution request, the District will need to modify current agreements which were previously authorized with the West Creek Preservation Committee and the City of Independence in order to apply for the aforementioned grants to fund this particular project.

Ms. Rotunno stated that the project cap is \$2.41 million which represents the total project funding. In the design-build project initiation, the District currently negotiated \$267,000.00 for the design and pre-construction service; \$109,000.00 for the general condition lump sum and a 14% fee of the construction. Ms. Rotunno explained that the other project components will be defined at the 60% design phase and that the GMP will be negotiated under the funding cap that is being requested from the Board today.

Ms. Rotunno concluded discussion by stressing the importance of the Board's understanding that the amount being authorized today is a cap against which the District will negotiate a GMP at the 60% design phase. She then turned discussion over the Board.

There were no questions from the Board.

Authorization to Amend Resolution

Resolution No. 3-12a	Amend Resolution 3-12 to award the entire one (1) year contract to Dazzle Lawn Care for lawn maintenance services (East, West and Southside). Cost: \$46,264.82.
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**MOTION** – Mayor Bacci moved and Mr. O'Malley seconded to adopt Resolution No. 3-12a. Without objection, the motion carried unanimously.

Authorization to Support Research Project

Resolution No. 48-12	Support Water Environment Research Foundation project for nutrient research. Cost: \$25,292.00.
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**MOTION** – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 48-12. Without objection, the motion carried unanimously.

Sewer Use Code Matter

Resolution No. 49-12

Adopt the findings of the hearing examiner with regard to the sewer account of Fred Crosby, Sewer District Case No. 12-002. Cost: \$3,999.39.

**MOTION** – Mr. O’Malley moved and Mr. Sulik seconded to adopt Resolution No. 49-12. Without objection, the motion carried unanimously.

VII. Information Items

1. 2012 Budget Overview.

Ms. Demmerle first presented the Board with an overview of the 2011 financial closeout. The District has five financial benchmarks: to operate within the rate study parameters; operate within the budget; meet debt service coverage; meet required reserve levels; and operate within the financial metrics established.

The District came in under the rate study in 2011. Ms. Demmerle noted that 2011 was the final year within the previous rate study and that much has taken place during the last six years including a declining economy and a decrease in consumption.

The District managed to keep its operating costs low and its debt service low. In 2010, the District restructured its bond issue to defer principal and capital interest in an effort to minimize impacts over the next rate period.

The 2011 operating revenues were slightly higher than the budgeted amount. Ms. Demmerle stated that 99% of the operating revenues come from user charges of which 91% is from the District’s billing agents.

The District consistently operated under budget over the last five years. The 2011 spending levels were similar to the amounts spent in 2008 and 2009. In 2010, there was an increase in spending resulting from Program Management, which was put in place to assist the District with its CIP. At the onset of said contract, much of those costs were associated with administrative functions which cannot be capitalized and therefore were allocated to the operating budget. Ms. Demmerle stated that those costs have since been capitalized and are now in the implementation mode.

Ms. Demmerle moved discussion to the savings. The District experienced a savings on the salaries of vacant positions and employees having gone out on disability. The District renegotiated its natural gas contract which resulted in \$2.2 million in cost savings. The

District has been budgeting for stormwater implementation and the SMP was placed on hold pending the outcome of the litigation and Judge Pokorny's ruling.

Ms. Demmerle moved discussion to the expenses. The Department of Operations and Maintenance comprises more than 50% of the District's budget. Salaries, wages and utilities comprise 70% of the operating budget. Capital expenditures were 13% less than the budgeted amount. Ms. Demmerle noted that historically the District runs about 85% of its budget for the CIP. Forty-five percent (45%) of the money was spent on WWTP improvement projects which includes the Renewable Energy Facility (REF) project. Thirty percent (30%) was expended on the CSO program which primarily included the Euclid Creek Tunnel (ECT) project.

Ms. Demmerle moved discussion to the District's funding sources. The majority of which came from the District's loan program which was approximately \$84 million and the District is still using 2010 bond proceeds.

Ms. Demmerle stated that the District came in at budget with respect to its debt service. Net revenue available for debt services was about 532% more for the debt service the District has to pay on its bonds which are above the goal of 1.25 and about 136% of our debt service on all debt.

Ms. Demmerle moved discussion to cash receipts and disbursements over the last six year. The yellow line represented the District's cash balance. The District ended 2011 with \$417 million in cash of which \$107 million is in reserves. The District adopted a Reserve Policy in 2009 and has continued to meet reserve levels. The District was able to transfer \$3 million into its Rate Stabilization Account.

Ms. Demmerle stated that the District established financial metrics which were developed based upon the rating agencies' ideals. By 2010 and into 2011 the District exceeded its targets. Ms. Demmerle explained that the current ratio is the District's ability to meet its current obligations and therefore the higher the ratio the more equipped an agency is to meet its obligations. The operating margin is the percentage of revenues over expense after operating expenses have been paid. It is the amount left to support debt service payments. The total debt to net equipment is how many assets are financed through debt which is in conjunction with the long term debt principal per customer. Ms. Demmerle stated that the Board was familiar with senior debt service coverage and total debt service coverage and therefore she did not elaborate on those. Lastly, were the days of operating cash on hand which in essence are how many days the agency can operate without further collection.

Ms. Demmerle moved discussion to the 2012 budget.



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The District's operating revenues are projected to be slightly lower than what was indicated in the rate study and that analysis was based on further information received including consumption data. The District is in line with its operating costs and debt services. Ms. Demmerle noted that even with the decrease in revenues, the District is projected to meet its debt coverage ratios for senior bonds as well as its total debt.

When comparing the 2012 budget to the 2011 budget, Ms. Demmerle stated that the District is projected to experience a 7% increase in revenues. The District's 12% to 13% rate increase coupled with an estimated 6% decrease in consumption leaves the District with an estimated \$181 million in revenues for 2012. The District is budgeting less in 2012 for its operating expenses. The District's 2012 capital budget is 6% more than 2011. The debt service is slightly higher than the rate study's projected amounts due to loans.

Staffing levels will remain consistent. Ms. Demmerle noted that as of February 10<sup>th</sup>, staffing levels were at 630 and she advised that the District anticipates filling 12 vacant positions to bring staffing levels back up to 642 in 2012. The District budgeted to fill 15 new positions in 2012. Those positions will be for stormwater, customer service and engineering.

Ms. Demmerle moved discussion to the operating revenues and she reiterated that there will be a 7% increase from last year. Ninety-One percent (91%) of the revenues will come from the District's billing agents. The budget is about \$9 million over actual for the reason that the District budgets 2,080 hours for all open positions and there is a savings on the salaries of vacant positions and employees having gone out on disability. Ms. Demmerle noted that there is an increase in contractual services for stormwater. The District budgeted for SMP billing implementation, updating the stormwater financial plan, increased ash hauling and billing and collection fees.

Ms. Demmerle moved discussion to the 2012 capital budget and she advised that the District has spent \$88 million. The District awarded over \$200 million in projects since 2010 and the District is seeing the effects of those which will impact cash flow over the next five years. The District anticipates awarding 30 projects for about \$147 million in 2012. Forty-six percent (46%) of those will be from the CSO program namely the ECT and Easterly Tunnel Dewatering Pump Station (ETPDS). With respect to WWTPs improvements, 37% will be for the REF. The funding sources available include \$250 million in bond proceeds. Over the next five years, the CIP will be over \$1 billion of which \$700 million has already been awarded. Cash flow over the next five years is slated for projects already awarded and close to 50% of those are for projects stemming from the CSO program.

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In addition to the ECT, ETDPS and REF, major capital improvement projects slated for 2013 include multiple improvement projects at the Southerly and Easterly WWTPs. In 2014, the ECT and ETDPS will ramp down and the District will begin constructing the Dugway West Interceptor Relief Sewer (DWIRS) and 400 MGD Secondary Capacity projects, which will continue through 2015. The main project slated for 2016 is construction of the Dugway Storage Tunnel (DST), which is currently in the design phase.

Ms. Demmerle stated that the size of the CIP is driving the District's debt service and given the cash flow, the District anticipates bond issues in 2013 and 2016. Ms. Demmerle referred to a graphic depicting the prediction of the District's debt service over the next five years. Based on those charts the District anticipates maintaining its goals with those two bond issues.

Ms. Demmerle concluded by stating that the District met its financial benchmarks for 2011. The operating budget is consistent with the rate study and the 2012 budget remains flat over 2011. The District intends to continue to meet its debt service coverage and reserve levels.

Ms. Demmerle notified the Board that a Finance Committee meeting is scheduled for February 28, 2012 at 9:00 a.m. to provide the Committee with a detailed 2012 budget. If there are no changes to the budget, then the District anticipates bringing the 2012 budget to the Board for consideration at its March 1, 2012 meeting.

Mr. Sulik encouraged Board members who may be interested in the budget review process to attend the February 28<sup>th</sup> Finance Committee meeting.

Executive Director Ciaccia commented that the Finance Committee meeting was publicly advertised and is open to all members of the public.

Mr. Brown commented that the District is in a healthier position and moving in the right direction. Although there has been good planning there is still more to do.

2. Program Management Status Report and Update – January 2012.

Ms. Rotunno referred to a photograph of the tunnel boring machine for the ECT project. This machine is 27 feet in diameter and has been packaged and will be shipped through Baltimore to the District's Nine Mile Creek (NMC) site. The delivery is estimated to take 65 truck loads from Baltimore to Cleveland. Ms. Rotunno noted that the ECT shaft is 175 deep and that work is progressing at all other locations as planned.

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The refractory brick was installed and completed at the REF. The incinerator and super heated steam piping installation is ongoing. Ms. Rotunno referred to a photograph depicting the steam turbine generator, which will produce energy at the REF.

Ms. Rotunno moved discussion to the Key Performance Indicators (KPIs) and she stated that there is not much to report on since it is the first month of 2012. The District is on target with its procurement goal of 95%. No projects have been awarded thus far and therefore there are no estimates of engineers' opinion of probable construction costs relative to bidders. Project delivery is on target at \$20.6 million for January.

Ms. Rotunno moved discussion to the contracts which were closed out in January. Ms. Rotunno noted that to simplify the District has reworded its KPI from closing out a contract within 105% of the total contract value to closing out contracts within 95% of the total contract amount. Ms. Rotunno referred to an image and stated that the red line represented 100% of the total contract amount which was authorized by the Board and that the KPI is to deliver those projects at 95% or less. Ms. Rotunno explained that most projects have a 10% general allowance of which the District strives to use less than 50% of that amount.

The Easterly Primary Settling Tanks project closed out at 96.2%. The Easterly Aeration Tank Rehabilitation project closed out at 92%, which was based on the re-scoping of certain items. The Easterly Interceptor Service Area Agreement project closed out at 62.4%. The aggregate of projects that closed out was 85.4% which was within the District's KPI.

Ms. Rotunno noted that the District plans closing out three more projects within 90 days including the Dugway East Interceptor, Southwest Interceptor and Flats East Bank Phase Three. Those projects are forecasted to meet the District's KPI metrics.

Ms. Rotunno moved discussion to KPIs of the Business Opportunity Program. Of the three projects that closed out in January two met their subcontractor goal. Ms. Rotunno noted that the two of the three contracts slated to close out in 90 days are expected to meet this KPI as well. Ms. Rotunno commented that the District strives to achieve its Business Opportunity Program goals and is off to decent start in 2012.

Ms. Rotunno closed with a quote: "Think little goals and expect little achievements; think big goals and win big success."

There were no questions for Ms. Rotunno.

VIII. Public Session (any subject matter)

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

IX. Open Session

There were no items for discussion.

X. Executive Session

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

**MOTION** – Mayor Bacci moved to enter into Executive Session to consult with legal counsel and District administration regarding the Court’s opinion on February 15, 2012 and proposed settlement discussions regarding the SMP litigation. Mayor Bacci stated that discussion of these matters in Executive Session are permitted as specific exceptions to the Public Meetings Act pursuant to Ohio Revised Code §121.22(G)(3) and he specifically designated all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(G), 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 1:40 p.m. to 2:02 p.m.

XI. Approval of Items from Executive Session

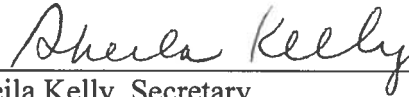
Resolution No. 50-12

Authorization to negotiate and enter into legal settlement agreements in the matter of Northeast Ohio Regional Sewer District v. Bath Township, Ohio, et al., Case No. CV-10-714945.

**MOTION** – Mayor DePiero moved and Mr. O’Malley seconded to adopt Resolution No. 50-12. Without objection, the motion carried unanimously.

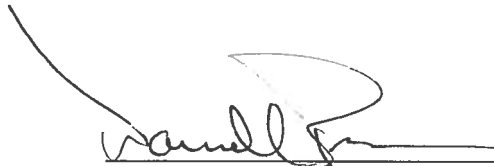
XII. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor DePiero moved and Mr. O'Malley seconded the motion to adjourn at 2:03 p.m. Without objection, the motion carried unanimously.



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



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