

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
FEBRUARY 19, 2009

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

I. Roll Call

PRESENT: D. Brown
T. Longo
D. DePiero
A. Liberatore
R. Sulik
S. Kelly

Mayor Starr was absent.

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes

Ms. Kelly advised that the February 5th meeting minutes be amended to include that Mayor Starr was “re-appointed” to the Board.

MOTION – Mayor DePiero moved and Mr. Sulik seconded that the minutes of the February 5, 2009 Board meeting be approved as amended. Without objection, the motion carried unanimously.

Resolution No. 43-09

Resolution of acknowledgment and appreciation to Anthony D. Liberatore, Jr., in recognition of his three (3) years of service as a member of the Board of Trustees of the Northeast Ohio Regional Sewer District.

Mr. Brown presented Mr. Liberatore with a Certificate of Recognition from Mayor Jackson of the City of Cleveland for his outstanding service and dedication to the City of Cleveland and his commitment to all citizens.

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 2 of 19

Mr. Brown also presented Mr. Liberatore with a Resolution of Acknowledgment and Appreciation from the Board for his three (3) years of service to the District. Mr. Liberatore was appointed by the Mayor of the City of Cleveland and served on the Board from January 1, 2006 through February 19, 2009. Mr. Liberatore served during a period of major transition as the District changed its leadership entering into a new era of transparency and public scrutiny resulting in the appointment of Executive Director Ciaccia, revision to the Board's Bylaws, a new Code of Ethics and Conduct, and new contracting guidelines. Mr. Liberatore was supportive and complimentary to the efforts of the Board and District staff in said changes.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution No. 43-09. Without objection, the motion carried unanimously.

Mr. Liberatore stated that although he is moving on professionally, during his tenure at the District, he made many personal friends which developed into very good relationships. Mr. Liberatore stated that he will not “be far physically” and “will always be available.” Mr. Liberatore stated that this has been a privilege and an honor, there were trying times, and that he was truly grateful for this experience.

III. Public Session

Executive Director Ciaccia informed the Board that Mr. Norman Edwards registered to speak at public session regarding methane gas, Mill Creek, Resolution 38-09, Resolution 39-09 and Resolution No. 40-09. Executive Director Ciaccia advised that Resolution Nos. 38-09, 39-09 and 40-09 were on the agenda for Board consideration, however, the methane gas and Mill Creek issues do not pertain to any agenda action items. Dennis J. Kampe, Ph.D., registered to speak at Public Session regarding philosophy, legality, scope and boundaries, which was not an agenda action item. Mayor Don Kuchta of Macedonia registered to speak at Public Session regarding fee increases for stormwater, which was not an agenda action item.

Without objection from the Board, Mr. Brown requested that Mr. Edwards, Dr. Kampe, and Mayor Kuchta, in that order, come forward and address their comments to the Board at the first Public Session.

Mr. Edwards stated that regarding Resolution Nos. 38-09 through 40-09, there is almost \$12 million worth of projects being awarded, and he inquired as to how much minority or disadvantaged business participation will be allowed on said projects. Mr. Edwards questioned if there will be minority workforce requirements on the projects as well.

Mr. Brown referred Mr. Edwards' questions to Executive Director Ciaccia.

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 3 of 19

Executive Director Ciaccia advised that workforce goals, as it pertains to minorities, females or residents are not included in the District's program, therefore, such goals do not exist on those particular bids or contracts.

Executive Director Ciaccia advised that there will be Minority Business Enterprise (hereinafter "MBE") and Women Business Enterprise (hereinafter "WBE") subcontracting participation on those contracts. Executive Director Ciaccia advised that he does not consider it to be "healthy participation," and that over the past years; MBE/WBE participation goals of 15% and 5% MBE/WBE were rarely met. Executive Director Ciaccia stated that when goals were met, it was sometimes questionable.

Executive Director Ciaccia stated that the District advised contractors to submit bids specifying the exact amount of subcontracting they intend to use. Executive Director Ciaccia advised that the bid from Kokosing of approximately \$6 million indicated that it would include \$27,500 of WBE participation, at this point in time. The District works with the contractors between the bid and contract signing, as well as, through the duration of the project in an attempt to increase MBE/WBE participation.

Executive Director Ciaccia advised that there were nine bidders on this project, and that there was a \$130,000 difference between the lowest and next lowest bidder. The next bidder listed 21% MBE and 5.4% WBE. The third bidder listed 16.3% MBE and 5.7% WBE. Executive Director Ciaccia advised that the District requires the contractors, as part of the bid package, to put forth a good faith effort identifying the methods used in reaching out to MBEs and WBEs. The contractor must submit documentation showing their advertising methods and to also provide a list of the subcontractors that submitted bids. Executive Director Ciaccia advised that Kokosing fulfilled this requirement.

Mr. Brown questioned "how so?" Executive Director Ciaccia replied that they placed ads in the appropriate vehicles in an effort to obtain bids and listed the companies that they tried to elicit bids from.

Executive Director Ciaccia reminded the Board that the District's MBE/WBE program is not legally defensible, and that contractors are aware of this. Mr. Brown was concerned that contractors have become presumptive and assumed that the District's MBE/WBE program is not legally defensible; therefore, are not making efforts to engage MBE/WBE participation on contracts. Executive Director Ciaccia believed that this was not the case, and he speculated that the contractors asked for bids from MBEs and WBEs, as well as, other subcontractors and selected the most competitive subcontractor. Executive Director Ciaccia advised that, based on his personal observation, subcontractors are brought in after projects are underway. Executive Director Ciaccia assured the Board that the District intends to work with the contractors in an effort to engage additional MBE, WBE and Small Business Enterprises (hereinafter "SBE") participation, however, at the time of

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 4 of 19

the bid submittal, the contractor selected the most competitive subcontractor bid in order to submit the best possible price resulting in the lowest bid and being awarded the contract.

Mr. Brown stated that during these challenging economic times, the District is desirous of "keeping its construction dollars local" to provide opportunities to the businesses within the community having the capacity to complete this type of work. Mr. Brown indicated that the reason these local businesses are not being engaged on these particular contracts is a paramount concern to himself and the Board. Mr. Brown acknowledged that although there may be a "legal defensibility issue," it is a "moral defensible issue" that concerns him as well. Mr. Brown suggested that, at some point, the District must take a position that says there are opportunities for work to be done, and this community is very diverse, therefore, the work should be inclusive of all these entities that make up the community. Mr. Brown indicated that although he did not have the resolution to this matter, he wanted to inform the staff of his concerns.

Mr. Brown indicated that this is irrespective of the final SBE program, and that there were several disparity studies suggesting that in the construction industry the disparity is in vertical construction, as opposed to the types of work the District undertakes. However, laying that aside, the District is a major employer within this community providing construction opportunities, and Mr. Brown suggested that the District forge a relationship with the contracting community clarifying the District's expectations. This is a moral expectation of how the District intends to engage subcontractors "who work and make their livelihood" within this community.

Mr. Liberatore stated that as a Board member and Business Manager for Local 860, he shares in Mr. Brown's concerns. Last year, Local 860 celebrated 70 years in the City of Cleveland supporting its residents and its minorities. Mr. Liberatore indicated that, as a labor organization, it is frustrating when contractors engage in work within the community and "use our tax dollars for their profit and not share it with the residents or the minorities of this community."

Mr. Liberatore stated that "as a function of workers and to represent those members of Local 860, that is what we have been doing, and we are proud to say that for the last 70 years, when employers do come in as guests to the agencies that operate the utilities and roadways in the Greater Cleveland Area, we do everything within our powers to encourage them to hire local minorities and residents." Mr. Liberatore advised that when these contracts are awarded, and the awarded employer is present, he calls upon them to request their commitment to provide "job employment opportunities to the people of Cleveland."

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 5 of 19

Mayor Longo requested clarification as to how the District intends to expand MBE/WBE participation on these contracts.

Executive Director Ciaccia advised that deep discussions have been held amongst staff regarding the management of the moral issues while maintaining its legal obligations. The District shares in the moral concerns expressed by the Board, but without the results from the disparity study, which is presently being conducted, there is no legal authority for the District to set-aside or establish general goals based on race and gender.

Executive Director Ciaccia stated that subsequent to the bid, the District works with contractors and additional subcontracting opportunities will arise throughout the duration of the contract. According to Executive Director Ciaccia, in the bidding and construction process, "we always hang our hat on what happens at the time of the bid," but realistically, the contractors are shopping around to meet their numbers through other subcontractors. Aside from the subcontractors listed at the time of the bid, other subcontractors are engaged during the course of the project. Executive Director Ciaccia assured the Board that the District intends to work with the contractors in an effort to increase MBE, WBE and SBE participation that was not otherwise submitted with the original bid.

Executive Director Ciaccia advised that, as documented by past practice, goals were established at 15% and 5%, respectfully. Contractors bidding on District projects may have submitted a bid establishing the goals, but in actuality were placing their employees on the payroll of MBEs. Through the duration of the contract, the contractor may have decided not to utilize MBEs as initially stated, which significantly decreased MBE/WBE participation. The District is "caught in between these scenarios" and is diligently working to address these concerns.

Executive Director Ciaccia addressed the concerns about whether these contractors used local workers. With the exception of the management staff, the majority of the workers are being hired through the local union halls.

Executive Director Ciaccia advised that the District's SBE program does not stipulate race and gender participation; however, this issue will be addressed in the future.

Mayor Longo inquired if the Board can adopt a resolution supporting that an effort be made ensuring that MBEs and WBEs are provided an opportunity to engage in this work. Executive Director Ciaccia advised that the Board could not mandate this and deferred to Director of Law, Marlene Sundheimer.

Mayor Longo inquired if the Board could issue a statement "urging that every effort be made to work this out." Ms. Sundheimer advised that Board could pass a resolution

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 6 of 19

stating its desire to encourage contractors that are awarded District contracts to make their best efforts to increase MBE/WBE subcontracting participation; however, the law does not allow the Board to mandate this.

Mayor Longo inquired as to the status of the disparity study. Ms. Sundheimer advised that the District recently launched this project and it is in the data gathering stage. The disparity study is projected to be a 12 month engagement; therefore, the preliminary draft of the recommendation will be available near the end of 2009. Mayor Longo inquired if, as the District awaits the disparity study results, it will continue operating in "this gray area" in which Ms. Sundheimer affirmed.

Ms. Kelly stated that having only \$27,500 of a \$6 million contract going to a WBE is "absolutely insulting" and "insane." Ms. Kelly indicated that it is apparent that these contractors have no relationship with MBEs and WBEs. Ms. Kelly stated that this is a major project costing \$6 million, and she questioned why a company able to carry out this type of work has no relationship with MBEs and WBEs. Ms. Kelly inquired if the lowest bidder was present at the meeting to address this issue. Executive Director Ciaccia advised that the lowest bidder was not present, and that they have engaged in previous work with the District; however, he could not speak on behalf of their relationships with MBEs and WBEs.

Executive Director Ciaccia advised that there were nine bidders for this project, and that the bids were extremely tight and competitive which indicates that the subcontractors' bids had to be tight and competitive as well. Executive Director Ciaccia assumed that this factored into the result of the MBE/WBE participation, and that the contractor engaged in previous work with the District.

Ms. Kelly referred to a previous comment made by Executive Director Ciaccia regarding the contractor fulfilling its obligation by providing evidence that it sought out MBE and WBE participation, and she inquired as to the process used by the contractor. Ms. Kelly stated that the contractor was not present at the meeting, therefore, could not address this issue, and she indicated that their absence from a meeting in which they were to receive a \$6 million contract "speaks volumes."

Executive Director Ciaccia advised that the contractor advertised in the *Call & Post* and submitted an Excel spreadsheet listing the 23 MBEs and WBEs that were contacted as well as their responses to the solicitation to subcontract, and this information was submitted with the bid documents.

Ms. Kelly inquired if the District follows-up with the subcontractors to verify if the contractor contacted them. Executive Director Ciaccia advised that this was a good

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 7 of 19

question; however, he was unsure. He recommended that the District engage in this practice.

Mr. Edwards stated that Kokosing had requirements with the City of Cleveland during the airport expansion and had no MBE or DBE (Disadvantaged Business Enterprise) participation "until we brought it to the attention of the City of Cleveland." Mr. Edwards stated that "this is purposely done, even when there is a requirement with the City of Cleveland, Kokosing comes into this city, and this is a regular item that they do." Mr. Edwards alleged that they "forget the minorities, forget the blacks, whatever you have is not good enough for them."

Mr. Edwards advised that he began his career at Local 860 with Tony Liberatore, Sr., and he stated that Mr. Liberatore, Sr. did "everything possible for blacks and minorities." Mr. Edwards advised that two of his brothers currently work under Local 860. Mr. Edwards explained that Mr. Liberatore has a list of qualified African American and minority contractors. Mr. Edwards stated that if "Kokosing wanted contractors on that job, and they come into this town, they usually sit down with the labor organizations, he could provide them with a list."

Mr. Edwards stated that he disagreed with Executive Director Ciaccia, and he alleged that projects within the State of Ohio involving state or federal funding have a 16.9% federal mandate for minority workers and a 6.9% mandate for female workers. Mr. Edwards corrected himself and advised that this is the case only if the entity receives funding from the federal government or the State of Ohio. Mr. Edwards restated that if any federal or state dollars are involved with these projects, then there are federal mandates, and these are requirements, not goals.

Mr. Edwards stated that the disparity and minority studies are "another way to prolong the contractors and prolong the diversity." Mr. Edwards stated that \$27,000 and \$6 million is the "norm for Kokosing" and "that is what they do." "That is what they think of us. They come in from outside of Columbus, and that's what they think of blacks and minorities. It's not going to get better-- unless you take the guys out there, and we have to protest on that job, then they'll do that, and you bar them from going in on that job."

Mr. Edwards stated that, "in 2009, we should be past that level, with an African American president." Mr. Edwards demanded that the District "stop the business as usual" and "quit putting the band-aids" on this "serious" and "significant problem." Mr. Edwards stated that there are "a lot of eligible taxpaying men and women that can work," and Mr. Liberatore has "a ton of people that can work; don't just rely on my stats." Mr. Edwards indicated that there are "plenty of qualified African Americans and minorities that are denied because of the prejudices."

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 8 of 19

Mr. Edwards moved discussion to the methane gas issue at the Mill Creek tunnel, and he read aloud from a document dated August 16, 2007 which indicated that "the Mill Creek project is a crucial part of the District's long-term plans to upgrade infrastructure...the tunnel had to be shut down because of leaking methane gas." Mr. Edwards claimed that the District shut the project down while advising that there was not a methane gas problem at Mill Creek. Mr. Edwards indicated that at the previous Board meeting, he was advised that there was "no methane problem and that there never was a methane problem," but the "job was shut down due to a methane problem."

Mr. Edwards stated that Keruish Park is in an African American neighborhood, he has family that lives near this location and he passes by this area almost every day. Mr. Edwards stated that his concern was about the safety of African Americans residing near this location, and he advised that "if the project was shut down for seven or eight months due to a methane problem-- that project has been sitting idle for at least a year and a half, maybe going on two years, it's been awhile." Mr. Edwards stated that although there may be sensors in the tunnel, he still does not think it is safe for the neighborhood and that he has concerns about the methane gas. Mr. Edwards claimed that he "worked in tunnels before."

Mr. Edwards believed that the methane gas problem at Mill Creek continues to exist, and that "nobody can tell me yeah or nay with any certainty that there is not a methane gas problem in that tunnel."

Dr. Kampe reported to the podium and stated that he wanted to provide a "prelogue" involving the "philosophy of operation, the legality of certain things, and the boundaries with which you are all operating." Dr. Kampe stated that he became a resident of the City of Parma in 1972, the same "year of birth" of the District; therefore, he has been a customer of the District since its inception. The District "has grown, gotten bigger, and hopefully better." Dr. Kampe stated that the "1972 Justice McMonagle Court Order is not a static, locked in place forever kind of a document."

Dr. Kampe stated that he was sure the District changed "much like the U.S. Constitution, there is probably at least ten or 100 foot of legal opinions worth of things relative to that Court Order and many cases."

Dr. Kampe advised that the customers "like clean-flowing streams," and that "we don't want to dump too much crap in Lake Erie because it might come back to us."

Dr. Kampe stated that "the Mayor [DePiero] knows this as well because he used to be much bigger and I've been able to beat him down a little bit," but one sewer back-up in your basement is "one too many." It is worse if there are "tootsie rolls on top of your new indoor swimming pool."

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 9 of 19

Dr. Kampe stated that the local municipalities “take care of the local stuff” and the District handles the “interceptor sewers and beyond,” and he inquired about the legal mandate. Dr. Kampe indicated that he understood the “politically correctness of letting each of the municipalities doing their things,” but this question is “from the customer’s point of view.” Dr. Kampe explained that he does not “care that much about clean-flowing streams,” and that his concern is not finding a “surprise” at home after intense local thunderstorms.

Dr. Kampe inquired if the District is “legally mandated to stop at the interceptor sewer, or is that the way things have developed.” Dr. Kampe indicated that, if the District is not legally mandated, then he had a follow-up question.

Dr. Kampe stated that “in your five-year programs and in your discussions in wherever, if anybody has ever brought this up relative to expanding your role,” and with regard to stormwater, he questioned “why not go instead of away from my house but towards my house?”

Dr. Kampe stated that there is no mission statement for the District. He was informed by staff that the mission statement was posted on the wall by the entrance to the Public Meeting Room. Dr. Kampe claimed that the mission statement is not on the District website, nor does it appear in the “annual and four and five year plans.” Dr. Kampe stated that “even the Water Department has a mission statement, believe it or not, not that they follow it, you know.”

Dr. Kampe stated that “the question really is the legality,” and if it is legal and you guys are working your way away from my property,” would the District consider “pulling it back a little bit.” Dr. Kampe stated that he knew the “politically correctness” and that “all the mayors and everybody else want control,” but “as a customer,” he no longer wanted “tootsie rolls” in indoor swimming pools.

In response to Dr. Kampe’s question, Ms. Sundheimer advised that there is no mandate to stop at the local sewers; however, the 1972 Court Order carved out jurisdiction over the local sewers based upon the settlement of the litigation.” The local communities desired to maintain jurisdiction over the local sewers, but “there is no legal mandate for the District to stop there.”

Ms. Sundheimer stated that Ohio Revised Code (hereinafter “ORC”) §6119 provides broad authority to the District to construct, maintain and operate wastewater facilities, which includes both sewer and storm water facilities. As stated in Ms. Sundheimer’s previous stormwater presentation, the mandate and scope of the jurisdiction is very broad.

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 10 of 19

Mayor Longo stated that on “the other side of the coin is the political will and at what cost.” The District has not been “overwhelmed by the community saying come and take over,” and many communities use the Cuyahoga County Sanitation Engineer to manage their local distribution system. There has been “enough problems just getting to stormwater management, and we haven’t come to grips with that yet.”

In response to Dr. Kampe, Mayor Longo stated that his concerns are “a completely different ballgame” and that “every one of the communities in Northeast Ohio are a mess.” He stated that the District has not “stepped across that boundary” yet and that someday it may go to this extent, however, it depends on “what local communities have to say about it and at what cost.”

Mr. Brown agreed with Mayor Longo’s comments and advised that it varies between jurisdictions on the local level, and that some communities’ responsibilities take effect at the curb while others go to the main sewer. The District’s Sewer Use Code dictates what local communities are required to do regarding discharges into the system. Communities are required to submit annual compliance reports indicating the steps taken to provide service and issues dealing with overflow projects.

Mr. Brown stated that there is nothing prohibiting the District from providing the services, mentioned by Dr. Kampe, to its customers; however, local jurisdictions indicated that it is within the best interest of their constituents for said services to be provided by the communities or the County Engineer. The District’s intent is to ensure that there is capacity within its system to receive flow from the communities for treatment and disposal.

Mayor Kuchta addressed the Board regarding stormwater issues and he informed the Board that the community of Macedonia is located upstream from the District. The District receives water from Macedonia’s impervious areas. Mayor Kuchta respected that “people are starting to realize that there’s a connection between stormwater and sewers.” He advised that basement flooding results from stormwater getting into the sewers, and that his community is a contributor to the problem because it is located upstream.

Mayor Kuchta stated that June 22, 2006 was a “big” and “bad” day for his community which flooded horribly. Consequently, he initiated a stormwater committee that responded to stormwater issues. These committee members gave up free time with their families by responding to areas impacted by stormwater and attending seminars and clinics in an effort to educate themselves on stormwater issues.

Mayor Kuchta advised that Macedonia took this further and hired a consultant, while mapping, planning and prioritizing issues in an effort to assist downstream communities. Mayor Kuchta stated that his community “is on the cusp addressing problems;” however,

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 11 of 19

this effort is coming into fruition simultaneously as the District unveils its Stormwater Management Program and proposed fees. Mayor Kuchta praised Executive Director Ciaccia and Director of Watershed Programs, Frank Greenland, for working with him and for their understanding and willingness in addressing his concerns. Macedonia has a plan and model but needs funding.

Mayor Kuchta stated that the District is “responsible for millions” and he is “responsible for thousands” and that “there’s a big difference, but there’s not.” Mayor Kuchta indicated that he was desirous of fixing the problems or keeping stormwater out of the streams through stormwater retention.

Mayor Kuchta stated that it was suggested to “dig the stream deeper” to “increase the line,” but this does not work. Macedonia has a plan and is ready, and he commended the District for meeting with them to address the concerns and identify remedies.

Mayor Kuchta advised that he is concerned about the rate increases over the next three years. When Mayor Kuchta became Mayor of Macedonia, he “came into a city that had a million dollars worth of debt in its tax department” and was a city having “a million dollars worth of negative funds.” His first “carry-over balance was a negative \$227,000. The Route 82 Bridge was being built for years. There was no money” or “signed contract with the railroad.” He described the Route 82 Bridge as a “horrible nemesis” for his community. Conversely, last September, there were “no negative funds” and all other debts were erased.

Mayor Kuchta inquired if the District attempted to identify other funding mechanisms other than the taxpayers and whether the District applied for stimulus funding. Mr. Brown advised that the District did. Mayor Kuchta stated that he applied for stimulus money because he has “some very worthwhile projects” and advised that if he receives funding, he will “donate to the District so that we wouldn’t have to face an increase in our rates.”

Mayor Kuchta inquired about the process used in determining and prioritizing stormwater projects.

Mayor Kuchta stated that the Route 82 Bridge is half complete and that Congressman LaTourette “is a God send” as well as many Summit County officials.

Mayor Kuchta advised that the District intakes Macedonia’s flow whereas the Summit County Sewer Department maintains its sewers. Therefore, his community is “caught in between having one person we are paying for our car and the other one is maintaining it” which leads to problems.

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 12 of 19

Mayor Kuchta thanked Executive Director Ciaccia, Mr. Greenland and District staff for their cooperation and for providing him with the financial information that he requested.

Mr. Brown thanked Mayor Kuchta for his comments and stated that the Board shares in his concern and that stormwater management is another unfunded mandate. He stressed the importance of working collaboratively with the communities for the reason that stormwater does not respect jurisdictional boundaries, and that alleviating stormwater problems in one area could create issues for the downstream neighbors. Addressing stormwater issues, from a regional perspective, and identifying the most suitable approaches and projects that will benefit the region can be facilitated by an organization such as the District.

Mr. Brown stated that the City of Cleveland is "at the bottom of everybody's heel," therefore, he appreciated Mayor Kuchta's concerns. Mr. Brown advised that the District will continue to fight for funding because federal funding should be made available to communities to assist with stormwater issues.

Mayor Longo thanked Mayor Kuchta. He advised the Board that Mayor Kuchta serves on the Suburban Council of Governments Bylaws Committee which is expeditiously moving forward with its Bylaws revision, and that he eagerly anticipates this Committee's recommendations.

Mayor DePiero thanked Mayor Kuchta for his comments and advised that they discussed his concerns as well. Mayor DePiero appreciated District staff for involving Mayor Kuchta and providing him with the requested information.

Mayor DePiero acknowledged constituent, Dr. Kampe. Mayor DePiero shared in his concerns, and he advised that August 7, 2007 was a significant date for the region as well as various times when he was councilman and state representative in this area. Mayor DePiero stated that stormwater discussions "have been very good;" however, communities such as Broadview Heights have implemented stormwater fees, and he indicated that Macedonia is progressively addressing stormwater issues. Mayor DePiero assured that the aforementioned concerns are not falling on deaf ears.

IV. Executive Director's Report

Executive Director Ciaccia began his discussion by addressing the District's status as it pertains to the economic stimulus package. He advised that the federal government passed the bill, and that \$4 billion will be set aside specifically for wastewater, which was \$2 million less than the House bill proposal. The House bill initially split the funds on a 50/50 basis, of loans versus grants, but this was removed from the bill, and now it provides the state the authority "to give 100% grants, if they so choose."

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 13 of 19

The state affordability guidelines of distribution of funds pertaining to the operation of cities and median household incomes is no longer a requirement and was eliminated from the bill; however, issues may arise as it moves through the State of Ohio. According to Executive Director Ciaccia, Governor Strickland's office will administratively distribute the federal funds through its various agencies. The wastewater funds will go through the Ohio Environmental Protection Agency (hereinafter "EPA") and the Water Pollution Control Loan Fund (hereinafter "WPCLF") process. Ohio is expected to receive \$224 million for wastewater and \$58 million for water.

Ohio State Senator John Carey, Chairman of the Finance Committee, proposed Senate Bill No. 2 which will require the Senate to authorize the distribution of funds, and there are ongoing hearings regarding this issue. Executive Director Ciaccia urged the Board and staff to reach out to Cleveland representatives or senators on the committee including ranking minority member, Dale Miller, Shirley Smith and Tom Patton of Strongsville. Executive Director Ciaccia advised that, like the federal government, this would have to be reconciled with the House, and it was his understanding that Governor Strickland and Senator Carey discussed this issue and this "may go in a different direction."

Executive Director Ciaccia advised that the District has to jump many hurdles to properly leverage some of this money. The District collectively with other wastewater agencies including the Association of Ohio Metropolitan Wastewater Agencies (hereinafter "AOMWA") sent letters to Senator Carey and Governor Strickland urging the funding to be distributed as 100% grants, negative interest loans or principal forgiveness types of programs. Distributing the funding as loans will only increase debt service requirements, therefore, the District is really urging that these funds be distributed at 50/50 or better.

The WPCLF is a vehicle for distributing funds; however, this approval process takes months to complete and needs to be streamlined. Executive Director Ciaccia stated that the federal government requires at least 50% of these grants, which is an issue that will need to be addressed since the Ohio Revised Code may not allow for grants at all. Executive Director Ciaccia advised that affordable criteria for WPCLF loans apply to negative interest loans and principal forgiveness.

Executive Director Ciaccia indicated that the District requested that "design-build" contracting be considered since the District is governed by ORC 6119 and is prohibited from this contracting method.

The District submitted \$274 million worth of projects, and plans to submit the same projects on the government's website. Executive Director Ciaccia advised that staff is drafting letters urging the government to make necessary modifications to various

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 14 of 19

statutes in an effort to obtain funding quickly, and he encouraged Board members to assist with the submittal of these letters.

Executive Director Ciaccia moved to the next report item regarding the Flats East Bank (hereinafter "FEB") project. The District met with the Developer several times since it requested additional funding from the Board. It was determined that \$1.2 million is available through the County and Clean Ohio Fund, therefore, when staff brings this resolution back to the Board for consideration it will be for approximately \$3.5 million, or \$1.2 million less. The District continues working with the Developer on change order pricing in an effort to conform to District standards, particularly in its bid documents. This information is being compiled and Executive Director Ciaccia anticipated that staff will bring this to the Board at its next meeting.

Executive Director Ciaccia moved discussion to Program Management Phase 2, and he advised that the District is finalizing its negotiations with CH2M Hill. The District is looking into a 5-year arrangement with CH2M Hill and Executive Director Ciaccia stated that this will be brought to the Board at its March 19th meeting.

Executive Director Ciaccia moved discussion to the Combined Sewer Overflow Long-Term Control Plan (hereinafter "CSO LTCP"), and he advised that the District provided the government with technical clarification regarding the Easterly tunnel and its interaction with overflow CSO-001. The District provided the government with financial clarification and is scheduled to meet with the government's economist on February 26th to review the financial capability analysis.

Executive Director Ciaccia stated that a Finance Committee Meeting is scheduled for March 3rd at 9:00 a.m., in the Public Meeting Room, to discuss the proposed 2009 budget, which will be distributed at the March 5th Board meeting.

V. Consent Agenda

There were no Consent Agenda items.

VI. Action Items

Authorization to Re-bid

No discussion ensued on Resolution No. 9-09.

Resolution No. 9-09

Reject all bids and re-bid for the purchase of two (2) 6,000 gallon Sodium Hypochlorite tanks for use at the Westerly WWTP. Anticipated expenditure is \$31,000.00.

Authorization to Purchase

No discussion ensued on Resolution No. 31-09.

Resolution No. 31-09

Direct purchase from sole source vendor, Dearing Compressor & Pump Company, replacement parts on an as-needed basis for five (5) Gardner Denver Process Air Compressors used at the Southerly WWTP. Anticipated Expenditure is \$100,000.00.

Authorization to Enter into Contract

No discussion ensued on Resolution Nos. 32-09 through 35-09.

Resolution No. 32-09

Various contracts for open market purchase of electrical repair and minor construction services used by the Building Maintenance Department at all District facilities. Anticipated expenditure not to exceed \$60,000.00.

Resolution No. 33-09

One (1) year requirement contract with Action Door for overhead door maintenance at all District facilities. Cost is \$40,846.40.

Resolution No. 34-09

Three (3) year requirement contract with the Fowler Company for substation preventative maintenance and repair at All District WWTPs and at EMSC. Cost is \$852,350.00.

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 16 of 19

Resolution No. 35-09

One (1) year requirement contract with JCI Jones Chemicals, Inc. for Sodium Hydroxide Solution used at all WWTPs. Cost is \$122,922.56.

MOTION – Mayor Longo moved and Mr. Liberatore seconded to adopt Resolution Nos. 09-09, and 31-09 through 35-09. Without objection, the motion carried unanimously.

Resolution No. 36-09

Contract with B2Gnow/AskReply, Inc. for the procurement of vendor diversity compliance and monitoring software licensing, maintenance and implementation services to support the District's Small Business Enterprise Program. Cost not to exceed \$39,620.00.

Resolution No. 37-09

Contract with Noetix Corporation for the renewal of the annual software maintenance and support services for Noetix reporting software. Cost not to exceed \$35,703.50.

MOTION – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 36-09 and 37-09. Without objection, the motion carried unanimously.

**Resolution No. 38-09
(HELD)**

Contract with Kokosing Construction Co., Inc. for Cuyahoga Valley Interceptor Lift Station Improvements – Contract LS-3. Cost not to exceed \$6,020,200.00.

**Resolution No. 39-09
(HELD)**

Contract with Marous Brothers Construction for Big Creek Interceptor 3D Valley and Ardoyne Connection – Contract BCI-3D-VAC. Cost not to exceed \$595,685.00.

**Resolution No. 40-09
(HELD)**

Contract with Nerone & Sons, Inc. for Easterly Aeration Tank Rehabilitation – Contract ATR-3. Cost not to exceed \$5,363,000.00.

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 17 of 19

Mr. Brown stated that in response to the Board's concerns regarding Resolution Nos. 38-09, 39-09 and 40-09, he recommended that a resolution be prepared encouraging potential contractors to increase their MBE/WBE participation. The contractors should appear before the Board at its next meeting to advise as to the efforts made to elicit engagement of MBEs and WBEs.

MOTION – Ms. Kelly moved and Mr. Liberatore seconded to hold Resolution Nos. 38-09 through 40-09. Without objection, the motion carried unanimously.

Mayor Longo stated that the resolution is “two-fold” and these three items will be held until the contractors come before the Board, and the contractors are to encourage and increase MBE/WBE participation as well.

Executive Director Ciaccia advised that a resolution will be prepared expressing the Board's encouragement of increased MBE/WBE participation and will be presented “up front” at the next Board meeting. Mr. Brown affirmed.

Executive Director Ciaccia concurred with the Board and indicated that “this was a good move” for the reason that staff continues struggling with legal constraints while balancing moral wants; customers' wants; and obtaining the lowest and best prices. These issues are colliding and we need to come terms with them. Furthermore, District staff conducts interviews with all of the contractors and Executive Director Ciaccia advised that it is an “excellent idea to have the Board weigh in” and this will be helpful.

Sewer Use Code Matter

Resolution No. 41-09

Settlement Agreement with Peter and Kathryn Kirsanow, NEORS Case No. 07-005.

MOTION – Mayor DePiero moved and Ms. Kelly seconded to adopt Resolution No. 41-09. Without objection, the motion carried unanimously.

VII. Information Items

There were no information items.

VIII. Open Session

There were no items for discussion.

BOARD OF TRUSTEES

Regular Meeting

February 19, 2009

Page 18 of 19

IX. Public Session (any subject matter)

There were no items for discussion.

X. Executive Session

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

MOTION – Mayor Longo moved and Mr. Sulik seconded the motion to enter into Executive Session designating all matters discussed in Executive Session be protected from public disclosure pursuant to the Ohio Public Records Act and attorney client privilege, and to specifically designate that discussions in Executive Session regarding the Nerone & Sons litigation be kept confidential pursuant to Ohio Revised Code §102.03(b) and as attorney-client privileged communications. A roll call vote was taken and without objection, the motion carried unanimously.

The Board met in Executive Session from 1:44 p.m. to 1:51 p.m.

XI. Approval of Items from Executive Session

Resolution No. 42-09

Authorization of the Director of Law to enter into a settlement agreement on behalf of the District in the matter of Nerone & Sons, Inc. v. Northeast Ohio Regional Sewer District, Cuyahoga County Common Pleas Court Case No. CV-08-652974.

MOTION – Mr. Sulik moved and Mr. Liberatore seconded to add and adopt Resolution No. 42-09. Without objection, the motion carried unanimously.

BOARD OF TRUSTEES

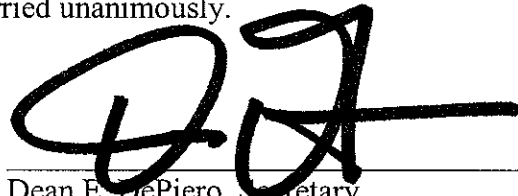
Regular Meeting

February 19, 2009

Page 19 of 19

XII. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Ms. Kelly moved and Mr. Sulik seconded the motion to adjourn at 1:53 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