

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
FEBRUARY 21, 2008

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  
G. Starr  
T. Longo  
R. Sulik  
S. Kelly  
D. DePiero

ABSENT: A. Liberatore

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes of January 17, 2008

**MOTION** - Mayor DePiero moved and Mayor Starr seconded that the Minutes of January 17, 2008, be approved. Without objection, the motion carried unanimously.

III. Public Session (no one registered to speak at the public session)

IV. Executive Director's Report

Executive Director Ciaccia began the review of the Director's Report, which was included in the Board packets, with a discussion of legal issues. He indicated that the draft ethics policy, on which Larry English and others in the legal department worked, is being finalized. The RTA ethics policy was used as a template for the District's policy. The ethics policy would be reviewed later in this meeting.

The District by-laws are being reviewed and related issues will be the province of the Governance Committee. Also under review is the District's MBE/WBE program. Documents have been prepared which report upon the performance of the District's current program.

The Ethics Committee has reviewed a potential Small Business Enterprise program, which is still in its inception phase. A new attorney will be brought on board to oversee the existing program as well as to assist with the modification of the program in the

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 2

future. Additional hires will be made, the responsibility of which will be to monitor or police the program.

Executive Director Ciaccia also discussed three outstanding construction claims. The first arose from the Southerly Early Action Contract, SEA-2A. The contractor was Nerone & Sons. The claims total \$900,000. The claim is for a microtunnel machine that failed during the project and had to be recovered, as well as, for lost time. The District has denied the claim. The contractor has requested mediation, which the District has not accepted. This remains an open issue.

The second claim is on the Easterly District Interceptor Relining and Replacement Contract. The contractor is Marra Constructors with a claim for \$225,000 which encompasses price increases during the course of that contract. The District has denied the claim as there is no contractual provision for price escalation due to market conditions. No alternative dispute resolution has been proposed.

The third claim is for the East 90<sup>th</sup> Street Relief Sewer project. Triad Engineering & Contracting is claiming \$320,000 for price increases and extended overhead costs related to a delay incurred on the project. The District has denied the claim. Escalation costs are not part of the contract.

Executive Director Ciaccia stated that the District as a policy will not just unilaterally settle these, or any claims, and that the District would certainly turn to the Board for the authority to settle. Mr. Brown expressed appreciation for Executive Director Ciaccia's discussion of these issues at the early stages of discussion to understand the exposure and potential liabilities the Board may be faced with going forward.

Executive Director Ciaccia continued with the review of the Director's Report with a discussion of watershed programs and stormwater management. The District is continuing to meet with communities regarding this initiative. There appears to be general support for the program.

The District continues to look at its court order authority as it relates to the ability to set fees for the stormwater program. It is an item that will have to be addressed as this program moves forward. The Governance Committee will be examining this issue.

A meeting of the Cuyahoga County Mayors & Managers Association is scheduled for February 28<sup>th</sup> at 9 a.m. The District will be speaking at this meeting in the morning. Director Korleski of the Ohio EPA will be speaking at the meeting in the afternoon. The district would like to obtain a letter or resolution of support from this organization as it is thought that this will be key when the District returns to court to make amendments to its journal entry to pursue this initiative. In the past when meeting with the communities the

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 3

District's purpose has been to get the input of the community; this meeting will provide the District with an opportunity to provide the communities with more information regarding the District's proposed stormwater program.

Mr. Brown stated that it is important to understand that stormwater does not respect geographic boundaries and also understand that how the stormwater problem has been exacerbated over the last 20 years. He referred to the stormwater problem as another unfunded mandate that communities across the country must deal with. He stated that many communities have partnered and created stormwater utilities which have found equitable ways to eliminate problems, as well as, to provide the capital means to resolve problems. None of the communities, by themselves, has the resources, capacity or technical knowledge. It is important that the District emphasize its expertise and experience as a repository of information which is a benefit to the communities in dealing with stormwater.

Executive Director Ciaccia stated that Betsy Yingling, Frank Greenland, and others have been relating that point in meetings with the mayors and their staffs. The Executive Director explained that at the February 28<sup>th</sup> meeting the purpose will be to explain exactly what the District is going to handle the stormwater program. This is the information the communities want now. Executive Director Ciaccia asked that the mayors on the District's Board attend the meeting as well as review the power point presentation in advance and offer any input so that the presentation is well put together.

Also included in the Board packet was a letter from Dennis Kucinich concerning the flooding in Independence which was associated with West Creek. A meeting has been scheduled for February 25<sup>th</sup> at 9 a.m. at the City of Independence Fire Department of which we will be a part. The Executive Director observed that it is unclear what the District's role is concerning this problem, but it is a good opportunity to put the stormwater program forward.

Executive Director Ciaccia returned to the idea of unfunded mandates. He stated that the District continues to develop costs with regard to eliminating CSOs in 23 locations identified by the government. The District continues to work with the government on the affordability analysis. Differences continue especially in what the District has quantified to be its residential consumption. The District will continue to work on these issues. A meeting with the government has tentatively been scheduled for March.

A letter from Senator Voinovich was also included in the packet which urges the EPA to provide funding. Funding has been significantly reduced for the state revolving loan fund. The President's budget for USEPA has been reduced from \$1.3 billion to \$500 million per year. It is important to note that these are loans, not grants.

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 4

Executive Director Ciaccia moved the discussion issues pertaining to engineering. Engineering continues to refine its scope and its potential RFP for program management services. Considering the large CSO program and a very large capital program in general, the District is looking at the resources and talent held in-house. The Executive Director suggested that the District is in need of some serious augmentation of the resources as it moves forward with these programs.

Executive Director Ciaccia indicated that there is a need for serious restructuring of how the District carries out project management and program management. An RFP and scope of services is being compiled in that regard. The Executive Director intends to have a presentation made to the Board on this subject at one of the two March Board meetings.

The second engineering item to be discussed concerned contingencies and allowances. Over the years the Board has approved change orders to construction contracts. Within the contracts are imbedded common allowances for unknown quantities of items such as utility relocations or electrical work beyond what is specified. Additionally there is a general allowance – or contingency allowance – which is for anything that comes up in the course of a project, including different site conditions and any other item related to the initial scope of that project that arises and needs to be addressed.

In the past the use of these allowances were not considered change orders, so were not brought before the Board. They were paid out of allowance line items within the contract. The District is now considering these particular allowances, and the District's obligation or lack thereof, to receive Board approval for use of the allowances. This is being considered in the context of the by-law revisions that the District is working on with the Governance Committee.

This is a very important issue for the District from the standpoint of construction management. There is even an opportunity to apply some of the principles in managing professional service contracts. Everything the Board has approved to this point has been change orders that resulted in contract modifications, other than legal settlements.

The Executive Director raised another matter to be addressed as to the original intent of the Board to sign off on change orders relative to general allowances and specific allowances. In response to a question by Mr. Brown, Executive Director Ciaccia stated that it is the intent to present to the Board a policy as to how these matters are handled and to receive Board approval on the proposed policy which will be imbedded in the by-laws to ensure consistency. Mr. Brown commented that it appears that both contract management and the funding related to the management of a contract are being tightened resulting in transparency of the actual dollars spent on a contract. The Board, therefore, is able to see the dollars in terms of what is authorized versus what is actually paid,

BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 5

including all contingencies, which is an important distinction. Mr. Brown also referred to a transfer of knowledge by experts in various disciplines in how to manage projects thereby allowing the District to go forward using its own resources to manage and be transparent and fiscally responsible to the Board and to the public.

Mayor Longo concurred with Mr. Brown's comments. He also inquired as to the projected increase in projects compared to what the District is currently handling resulting from the stormwater program.

Frank Greenland estimated that today there is approximately \$80 to \$100 million per year in capital with approximately one quarter of that amount on the stormwater side. He stated that this would ramp up in the next three years. Executive Director Ciaccia interjected that regarding the stormwater projects its important to remember that the District is not sure to what extent some of them will be capitalized because some are not tied to assets. The District will establish a separate funding source in order to carry out these projects through a proposed stormwater fee. Mr. Greenland added that there is a maintenance component and the capital component. About a quarter is related to clear capital improvements. The maintenance – that is repair and renewal of big pipes or streams – is difficult to capitalize.

Mayor Longo stated that as the process proceeds it will evolve. He also commented that the District will be evaluating how it presently handles projects, consider the methods used in the industry and bring it all together as to what would be the best practices or procedures for the District.

Executive Director Ciaccia responded that the District staff has done a good job of compiling a ten-year capital program, but that it is an evolving program because of its various facets – such as CSOs and stormwater. Additionally, because the District uses accrual accounting it needs to get into cash flow. Thus, there is a lot of work to be done on capital planning which goes beyond a mere list of projects.

Mayor Starr posed a question regarding as to which – the sewer rates or capital budget - the District will add ten to twenty percent. Mr. Greenland stated that it was just a comparison and that he made use of a rough estimate. If the District had \$20-\$25 million on capital, and depending on how large the system is, then it could add another 10-20 percent in repair and renewal for upkeep of streams and storm sewers. The real number will not be known until the program is established, a determination made as to what services the District provides on capital, the size of the system, and the extent of the system.

Executive Director Ciaccia qualified Mr. Greenland's statements with the caveat that a major determinant of the equation is the consideration of the amount to be spent each

BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 6

year. A stormwater fee will be included as part of the program. It is currently unknown as to what is an appropriate fee, but, the Executive Director continued, the proceeds from that fee are what the District will spend.

Mayor Starr inquired as to the size of the pipes that the District would assume responsibility for from the communities. Mr. Greenland replied that the size has yet to be determined. He speculated it would be the larger ones. The District would approach the communities with a proposal and discuss with each community what the District is going to do and the implications to them in terms of a regional system.

Mayor Starr continued by asking that once the size is defined then so too will be the linear feet that will become the responsibility of the District in terms of capital and maintenance. Mr. Greenland concurred.

Mayor Starr emphasized the importance of clearly defining the role of the District as to what the District will do compared to what each community will continue to do in the presentation on stormwater management. He further emphasized the importance of making it clear to the community that a regional program deals with a regional system, but this does not abdicate the communities of their responsibility. He further stated that there should be an educational component concerning what the communities can do to maintain their storm sewers, proactively, including working in conjunction with county, city assessments and maintenance models. Mayor Starr stated that it is important that the District makes clear to the communities, in order to prevent false impressions, that the District is not coming to the rescue and will not take over the flooding problems of the communities. Mr. Greenland concurred on Mayor Starr's point and further stated that the District is making it very clear to the communities that a regional program deals with a regional system, and that this does not abdicate the communities of their responsibility.

Mayor Starr stated that it would be helpful if the District could serve as a clearinghouse of information thereby avoiding the pitfalls of high turnover of institutional knowledge within the communities.

Mayor Starr asked Executive Director Ciaccia as to whether the Executive Director stated that allowances were change orders paid out to contractors. The Executive Director responded that based upon his previous experience, he would have considered allowances change orders, but that at the District allowances have not been change orders. He continued that what has been considered change orders at the District have been those events that result in a contract modification such as an increase in the contract amount or a closeout of a contract. Money coming out of general allowances, or changes in line items, has not been and currently is not as a practice, change orders. But, based on his experience they are change orders.

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 7

Mayor Starr inquired as to the amount of money Executive Director Ciaccia would be referring. The Executive Director responded that considering all the projects, it would be in the millions of dollars. Mayor Starr expressed his appreciation of the Executive Director's candidness and transparency.

Mayor Starr expressed his concern, and that of other communities, that the District must balance the need of continued economic development in Northeast Ohio with the concerns of the environment. Mr. Greenland assured Mayor Starr that the stormwater program does not stifle or end development. The motive of the program is to try to influence and help developments when they occur to look at source issues and not exacerbate flooding.

Executive Director Ciaccia continued with the review of his Director's Report by informing the Board that last month the District addressed three emergency situations. The first was a \$3,000 non-potable leak at Easterly. Terrace Construction from the small contractor's list completed the job.

The second emergency was a damaged 24" dry weather outlet resulting from a water main break on East 17<sup>th</sup> Street. Kenmore Construction will be completing that work at approximately \$35,000. A resolution will come to the Board for the authorization.

The third emergency is located in East Cleveland. It was originally to be part of a bid job, but a situation occurred resulting in the emergency. This resulted in an amended resolution removing this portion from the bid. Kenmore Construction completed the emergency repair. The work involved the impact of an East Cleveland sewer on a District sewer. East Cleveland passed legislation to authorize payment of 75 percent of the \$150,000 cost of the project. The payment has been made.

Executive Director Ciaccia addressed issues of customer service. The Cleveland Division of Water, the District's billing agent, is in the midst of a project to replace its billing system. District staff has been working closely with them on the project. Commissioner Nielson of the Division of Water and Barry Withers, the utilities director, will be asked to make a presentation to District staff regarding the status of the project and later in March a presentation to the Board. It is important that the Board be made aware of a couple of issues – specifically the proposal to combine the water and sewer bills. Currently two separate bills are sent. Combining the bills would be more cost effective, but the matter still must be reviewed internally before being presented to the Board.

Executive Director Ciaccia proceeded to matters of finance. He stated that as invoicing continues to be reconciled, because the District is on an accrual accounting basis, the District is significantly under 2007 budget. The District was significantly over on

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 8

operating revenue; last year's rate increase helped with that. The District was \$6 million under on operating expenses at this point. The Executive Director pointed out that in reference to how the approved rates are holding up against the District's expenses, the District is \$3 million ahead at this point. This is a key metric to which Executive Director Ciaccia will be referring throughout the year.

Executive Director Ciaccia introduced under the topic of communications the "Where Does It Go" campaign. He stated that community awareness is a key issue for the District especially as it delves into stormwater management. As the District gets into its CSO program and the increase in costs, it is going to be increasingly important to educate the public on exactly what the District does and what the public is buying.

Executive Director Ciaccia stated that the majority of the work on the campaign has been done in-house. Only \$30,000 has been expended on outside resources at this point. The Plain Dealer reported favorably on it. He will have Constance Haqq at one of the upcoming meetings to present more on this program. Mr. Brown reported favorable feedback on the campaign.

Executive Director Ciaccia thanked Board members, Mayor Longo and Ron Sulik, for attending the NACWA meeting that took place a few weeks ago. The Executive Director emphasized the importance of this national organization. NACWA is the advocacy group that the District is closely aligned with and in which the District is a leader. District staff chairs three of eight committees. Ciaccia complimented Mayor Longo and Mr. Sulik on the work they did as part of a panel discussion at the conference. He thanked them for their participation.

Mayor DePiero commended Executive Director Ciaccia and his staff. He has found the reports to be indicative of the openness and thoroughness of the new administration going forward. He appreciates this and believes that the public is well served by the continued communication with the Board. Mr. Brown concurred with the Mayor's comments and added that considering the multi-billion dollar capital planning initiative, it is important to be prepared with the right resources, tools and strategy to move forward in a timely manner. Further, it is not a small undertaking through the work of the Board and the staff to position the District to move ahead with its initiative.

Mayor Starr directed a question concerning online bidding to the Executive Director. Executive Director Ciaccia responded that online bidding is being considered. Currently the District's website is being used to disseminate bid information including specifications and due dates. This is phase one. Online bidding is something to consider in the future, which would be phase two. Executive Director Ciaccia has discussed this matter with Jennifer Demmerle, the Director of Finance. The Information Technology department would have to be closely involved. There are challenges associated with



## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 9

implementing online bidding, but progressively more public agencies are using this method.

Executive Director Ciaccia drew the attention of the Board to another packet enclosure. It is his response to that of KMM&K regarding its assertion of a post-MCT-3 construction explosion. The Executive Director stated he was able to discuss the matter with Mayor Longo as the project is located in the vicinity of Garfield Heights, the Mayor's municipality. Executive Director Ciaccia informed the Board that Marc Kritzer, the District's construction manager, visited with the police and fire departments in the area to ensure that there were no concerns. Ciaccia elaborated that those involved in the discussions understood that the purpose of KMM&K's communication, and for the record, it was for M-O-N-E-Y. Mr. Brown commented that the District should not be in a position where it does business with people/companies that resort to such tactics.

### V. Consent Agenda

Mr. Brown asked if there were any questions on any of the 14 items presented in the Consent Agenda. There were none.

**MOTION** – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution Nos. 39-08 through 51-08. Without objection, the motion carried unanimously.

### VI. Action Items

#### Ad Hoc Ethics Committee Recommendations

Executive Director Ciaccia deferred to Ms. Kelly to introduce the first two action items, Resolution Nos. 52-08 and 53-08. Ms. Kelly began by thanking the members of the Ethics Committee, Mr. Sulik, Mr. Liberatore, as well as herself, and the members of the District staff that assisted the Committee on drafting the policies and disclosure forms.

Ms. Kelly continued that the purpose of the Ethics Committee was to develop a Board and District staff ethics policy that would increase the transparency and accountability of the District. Meetings have been held over several months to review the current policies of the District and to update and revise the ethics policy.

Ms. Kelly referred the Board to a document in their packets that the Ethics Committee is recommending to the Board for adoption. She assured the Board that many people were consulted regarding the proposed policies and that they are the recommendation of the Ethics Committee.

Also submitted to the Board for approval is the conflict of interest disclosure form. This would need to be completed by all Board members, senior staff and other selected staff

BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 10

members. The disclosure form would make the District aware of any actual or potential conflicts that may require action by the District.

Ms. Kelly also stated that the Ethics Committee is proposing to the Board a code of conduct and decorum. The purpose of the document is to ensure that the Board is focused on the business at hand, that there are no distractions, and that there is no behavior that impedes the Board process. Ms. Kelly asked for questions from the Board.

Mayor Starr began with a question concerning the proposed code of conduct and decorum, Rule 5. He indicated that each of the seven Board members are independent and have seven independent fiduciary responsibilities. He asked whether a Board member would be in violation of a rule or incur penalties if a Board member responds when approached by the media rather than the media approaching the president of the Board.

Ms. Kelly deferred her response to legal counsel. Executive Director Ciaccia responded that the intent was not to preclude a Board member from speaking to the media. He indicated that it was up to the Board to interpret the provision. The Executive Director added that in recent discussions the decision was made to defer media comment to either the Board chair or to himself. He indicated that he believes that in those instances comments made by anyone other than the designated individual would be considered a violation of this policy.

Executive Director Ciaccia did concede to Mayor Starr that as a matter of practicality on routine, non-sensitive issues, he believes that the Board would not consider it a violation to speak with the media.

Mayor Starr responded that if a question is posed to him by the media concerning why he voted a certain way, that he wants to be able to respond without being in violation of Rule 5. Mayor Starr asked that the Board review Rule 5. Ms. Kelly agreed.

Mr. Brown added that the Rule refers to instances where significant issues come before the Board, and, as in the past, comment has been deferred to either the Executive Director or the Board chair to speak on that particular issue. He stated that he believes that it only makes sense to establish a rule or policy that this is how the Board wants such issues to be handled. Ms. Kelly concurred and added also as a means to maintain confidentiality. Mayor Starr responded that the Rule does not refer to that issue.

Mayor Starr paraphrased the Rule, stating that it permits only the president of the Board to serve as spokesman and for any other Board member to comment would be a violation of the Rule which raises the possibility of penalties. He stated that penalties may include prosecution by the county prosecutor under 7.01.

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 11

Mayor DePiero stated that he understands the point of Mayor Starr's concern. Mayor Depiero suggested that the wording be changed to the effect that the president of the Board shall speak on official policy or official actions of the Board, but Board members are free to speak to the media if posed questions. Mayor DePiero suggested that the Rule be expanded.

Mayor DePiero stated that he agrees with the practice of making the president of the Board the official spokesman per se, thus making it clear to the media to whom they should obtain comment from the Board as a whole. Mayor DePiero added that Board members should to be free to speak to the media if they are posed a question and it is appropriate for them to respond.

Ms. Kelly responded to Mayor DePiero's suggestion that it is the appropriateness that is key. She asked that the Board review the document and submit their input to Larry English, Assistant Director of Law for the District, by February 29<sup>th</sup>. Ms. Kelly clarified for Mayor Starr that the items from the Ethics Committee were not being moved on at this Board meeting, but were only offered for discussion.

Mayor Longo offered that a Board member could not be punished for something that was not covered by the Ohio Revised Code. He stated that the District was not an enforcement agency.

Ms. Sundheimer, Director of Law, responded to Mayor Longo's observations and affirmed that the reference to possible censure or referral to the county prosecutor refers to violating a specific motion to keep certain matters confidential, those that were specifically designated as confidential by the Board, such as litigation matters. Ms. Sundheimer suggested reading the ethics code in context of the specific provision in order to interpret it.

Mayor Starr suggested that language be drafted that indicate that the motions that are made should contain specific sections of exclusions under Ohio open meeting laws and reasons to go into executive session. He stated that the presumption is that this is a public body which discusses public affairs in openness with a freedom to speak without penalty or prosecution.

Mayor Starr stated that Rule 5 should specifically state the four exceptions. He agreed that if a document is stamped personnel, confidential litigation, attorney-client privilege, or exclusions specific to the Ohio Revised Code that these would not be discussed in an open forum. Mayor Starr and Mayor Longo directed Ms. Sundheimer to refer to State law in the language of Rule 5.

BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 12

Mayor DePiero began a discussion concerning Rule 7 which pertains to usage of cell phones, computers, and personal digital assistants. He acknowledged that he may be the worst violator of the Rule in response to Mayor Longo's admonishment to shut his cell phone off. Mayor DePiero indicated that there is a need to remain connected with his city offices in the event of an emergency or a situation that needs his immediate attention. He suggested that the Rule be made less restrictive in order to accommodate the necessity of maintaining contact with his community. He suggested a change of language from "will avoid" to "should avoid."

Ms. Kelly replied that the purpose of the Rule is to ensure that all Board members are focused on the business of the District and that receiving calls and emails can be very distracting. Mayor DePiero expressed his understanding.

Mayor Starr introduced a question concerning Rule 8. He stated that it has been common practice for 35 years to receive tickets from contractors and consultants for events of nonprofit organizations such as the Red Cross and NAACP. He asked how the Rule applied when the tickets generally are valued at \$25.

Ms. Kelly deferred to Ms. Sundheimer for a response. Ms. Sundheimer stated that it is a starting point for discussion. What was contemplated is to limit the receipt of gifts for the general employee as these things add up and become substantial. Anything under \$25 is considered by the Ohio Ethics Commission as *de minimis*. If the threshold is too low, it is open for discussion.

Mr. Brown asked if this policy reflects the current State ethics policy. Ms. Sundheimer responded that this policy is based upon that of RTA which was used as a template. Also examined were the State Ethics Code and examples that the State statute offers in terms of specific items. This is a typical threshold for gifts.

Mayor Starr stated that he believes it is worthy that these events are attended and asked why the District could not pay for it as an organization to the nonprofit corporations. It may seem unimportant but people have been prosecuted and convicted for these issues, so caution is necessary.

Mr. Bucci interjected a reply to Mayor Starr informing him that a few years ago the Board did pass a resolution authorizing the staff to buy tickets to some nonprofit events, and this has been done. Mr. Bucci confirmed that the purchases were made with District funds.

Mayor Starr raised the issue regarding gifts and values. He offered that the State says that it shall be a collective sum in a one-year period of time from a single source. Mayor Longo stated that elected officials have their own set of rules which must be adhered to,

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 13

regardless of the District's ethics policy. He also added that elected officials must report to the Ohio Ethics Commission. He asked whether the District policy was designed for the Board and District employees, which Ms. Kelly confirmed.

Mayor Longo explained that if taken to dinner a few times over the course time and the cumulative amount exceeds a certain amount it must be reported. Mayor Starr supplied the figure of \$75. Mayor Longo opined that the District policy is more restrictive.

Mr. Brown stated that this is typical of the policy that is followed at the City of Cleveland with the same parameters. He added that he does not find it to be particularly objectionable. He also stated that the Board would always have the ability to modify it for an appropriate reason if something became unreasonable, but that this was a good set of guidelines to start with. Ms. Kelly stated that the Ethics Committee was hoping to have the policy passed at this Board meeting, but that if it is unsatisfactory to the Board, then comments would be taken until February 29<sup>th</sup> for consideration in the final document.

Mayor Starr referred to a section on Page 11 of the policy and read "if this is done on a regular or frequent basis" and asked for a definition of "frequent basis." Ms. Kelly replied that the Committee was unable to define the term and that it was a matter of judgment. Mayor Starr pressed for a definition, but Ms. Kelly stated that it was difficult to quantify. Mayor Starr stated that the State of Ohio was able to define it as \$75 per individual per calendar year.

Mayor Starr asked whether the policy would be retrospective or prospective. Mr. Sulik and Mr. Brown responded as prospective. Mayor Starr confirmed that this would be in the future. Ms. Kelly responded in the affirmative.

Mayor Starr continued with questions as to the violations in the Code of Ethics, part 7.1, and asked if it was the consensus of the Board. He stated that it was a sequence of steps reflective of a progressive disciplinary action. Mayor Longo asked if that was like state code. Ms. Kelly responded in the affirmative. Mayor Starr stated that prior to the prosecutor having jurisdiction there must be a referral and investigation by the Ohio Ethics Commission.

Mr. Brown stated that what was being discussed appeared to be remedies. Further, that it does not suggest it to be progressive. Rather, these are remedies that may be considered and may be taken. Ms. Sundheimer confirmed Mr. Brown's analysis. She stated that they are intended to give the full range of remedies depending on the specific violation or alleged violation being considered. The most extreme remedy that may be considered would be referral to the county prosecutor.

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 14

Mayor Starr turned the discussion to outside business disclosure and asked if the Committee considered disclosure of outside income in excess of a certain amount by employees of the District or the Board. Mayor Starr confirmed that he was asking about work outside the District. Executive Director Ciaccia informed the Board that District employees can work outside the District, but they must file a secondary employment form, which he must approve. There are no income requirements or any requirements to report income, only that the outside work must be reported. Mayor Starr asked if this policy was implemented by the Executive Director. Executive Director Ciaccia replied that this policy has been in place for some time and is followed by the City as well.

Mayor Starr inquired as an example if an employee wanted to practice legal work outside of the District then the form would have to be filed. Executive Director Ciaccia replied that the current law director would, because the law director reported to him. Upon inquiring about the past practice, Mayor Starr was informed that the previous person who held the post did not report to the executive director but rather to the Board. Mayor Starr opined that this was a major issue. The Executive Director added that the current law director would not be permitted to have outside work.

Mr. Brown expounded that this issue was demonstrative of the reason the Board felt the necessity to create a different model for the lines of authority, and that the benefits of this change are becoming obvious. He further commended Ms. Kelly and the committee and staff for the work spent on the policy. Ms. Kelly confirmed that comments would be taken by Larry English until February 29<sup>th</sup> at which time they would be incorporated into the policy document and disseminated to the Board. Discussion would follow prior to adoption.

**MOTION** – Mayor Longo moved to hold Resolution Nos. 52-08 and 53-08 in abeyance. Mr. Sulik seconded. Upon clarification that the Resolutions would be held, that is postponed, without objection, the motion carried unanimously.

### Requests to Advertise for Bids

Executive Director Ciaccia began a discussion of three resolutions for requests to advertise for bids with Resolution 54-08 which concerns a request for bids for grit and screening disposal at the District's three wastewater treatment plants. He explained that the current 2-year contract ends on May 25, 2008. The contract is for removal of 15,000 tons of screen and grit from the plants. The current pricing is at \$67.28 per ton. Escalation of the price is expected to be within the range of \$1.2 million.

Resolution 55-08 is for authorization to go out for bids for the Vista Branch Sewer Project. The engineer's estimate is \$2.2 million. The Project is a 625 foot long, 24" diameter sewer to convey flows from the Vista Branch and the Mill Creek Interceptor. This project resulted from the collapse of the Mill Creek Interceptor due to the landfill

BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 15

operation at Chapek Parkway. This was originally to be an emergency contract, but was pulled from that process and will go out to bid. Mayor Longo inquired whether this estimate was at one time as high as \$7-8 million. Executive Director Ciaccia replied that figure was for an associated project – the Main Branch sewer.

Resolution 56-08 is a rejection and re-taking of bids for lease of predictive maintenance equipment. The Board was given a presentation in November 2007 on the District's use of such equipment and the District's desire to continue leasing the equipment as a 3-year requirement contract for the lease. Only one bid was received, and the bidder was unable to get bonding for three years. The resolution is for rejecting the bids and to re-bid for a one-year contract.

**MOTION** – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution Nos. 54-08 through 56-08. Without objection, the motion carried unanimously.

Requests to Award Bids

Mayor Starr asked about a bid where the bid came in at \$7.6 million which was 58% off of the engineering estimate of \$13 million. Executive Director Ciaccia replied that this has been discussed with the District's engineering staff. He acknowledged that it was a "blown" estimate. This estimate was for Bridge Rehabilitation Contract 4. The Executive Director added that Bridge Rehabilitation Contract 3 also had an estimate that was too high. It was over-estimated by \$2 million. The engineering staff had taken that bad estimate and compounded it into the new estimate plus added some misinterpreted contingencies based upon discussions with Ciaccia. He did acknowledge that the bids received were fairly tight which is good.

**MOTION** – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 57-08 through 59-08. Without objection, the motion carried unanimously.

Request for Progress Payment

Executive Director Ciaccia introduced Resolution 60-08 as project progress payment number three on the stormsewer that has eroded or corroded under the Huntington Garage. Montgomery Watson was hired to do the emergency work including inspection of the entire length of the outfall pipe. The progress payment is for \$24,000 which brings the current total to \$76,900. One additional progress payment is expected, but it will be below the authorized level of \$90,000.

**MOTION** – Ms. Kelly moved and Mayor Starr seconded to adopt Resolution No. 60-08. Without objection, the motion carried unanimously.

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 16

### Professional Services

Executive Director Ciaccia introduced the first of two resolutions concerning professional services. Resolution 61-08 is to hire Burgess & Niple, the designer of the Train Avenue Relief Sewer Project which is located at the intersection of Willey Avenue and Train Avenue, for construction, administration and resident engineering work. The project is to alleviate flooding in the area, and is now ready for the construction phase. The Board had previously authorized the taking of bids.

Resolution 62-08 is again associated with the work at the Huntington Garage stormwater outlet. The District is ready to consider the design of the remediation of the problem. Construction is estimated at \$800,000 to \$1 million. Executive Director Ciaccia reported at the prior Board meeting that the District was entertaining a proposal from Montgomery Watson, since they were already involved with the project, to begin with the design. Executive Director Ciaccia stated that considering the urgency of the situation and since the project was not of a large magnitude, he did not believe it was necessary to go out for an RFP. Therefore, Montgomery Watson has been hired for design at \$179,500. DLZ and KS have been included on the design team at 15% and 8.4%, respectively.

**MOTION** – Mr. Sulik moved and Mayor Longo seconded to adopt Resolution Nos. 61-08 and 62-08. Without objection, the motion carried unanimously.

### Request to Authorize Change Orders

No discussion ensued on Resolution Nos. 63-08 through 67-08.

**MOTION** – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 63-08 through 67-08. Without objection, the motion carried unanimously.

### Add-On Resolutions

Mr. Brown stated that Resolutions 68-08 and 69-09 were acknowledgments for appreciation for two employees of the District, Charles Vasulka, who was not present, and Lowell Eisnaugle, who was in attendance. Mr. Eisnaugle was asked to come forward for the presentation of his award. Mr. Brown read the commendation of the 31-year employee ending with his current position as Superintendent of the Southerly Wastewater Treatment Plant. Mr. Brown invited Mr. Eisnaugle to speak. Mr. Eisnaugle expressed his appreciation for the support of the Board and the senior staff over the years. He stated that the Southerly Plant was in good shape, has a good staff, and a bright future. Tim Tighe, Director of Operations, added his commendation of the work of Mr. Eisnaugle at all three plants and indicated that he has been a valued knowledgeable employee.

Executive Director Ciaccia also informed the Board that Mr. Tighe has announced his retirement and that he will be accepting employment with the City of North Royalton.



**MOTION** – Mayor Longo moved and Mr. Sulik seconded to adopt Resolution Nos. 68-08 and 69-08. Without objection, the motion carried unanimously.

VII. Information Items

Investment Advisor Performance through December 31, 2007

Executive Director Ciaccia presented to the Board Jennifer Demmerle who was to give a report on the investment advisor performance for 2007. Ms. Demmerle began by informing the Board that at the end of 2007 the District's investment portfolio was \$292 million. Boyd Watterson Asset Management is the District's investment advisor and had managed approximately 68% of the portfolio. At the end of 2007 the return on investments was 6.18%, which is 1.18% above the District's benchmark, which is a treasury bill because it is the safest and most liquid asset. The Board had no questions on investment advisor performance.

2008 Proposed Budget

Executive Director Ciaccia stated that Ms. Demmerle would continue with a discussion of the 2008 proposed budget. He added that there would also be a couple of reorganization issues relative to the budget as well. The Board members were all in receipt of the complete budget book.

Ms. Demmerle summarized the information as follows:

The discussion was outlined to include some of the organizational changes that have been incorporated into the 2008 budget, the budget process for the year, a financial overview of 2007 and for the proposed 2008 budget, Greg Binder would discuss the ten-year capital plan, ending with a discussion of next steps.

Two new departments were created. The first is the Department of Administration and External Affairs, formerly known as communications and community relations department under the direction of Constance Haqq. The new department will be about internal and external communications as well as for Board support and the growth of District employees. The leadership sustainability program will be under the umbrella of this department. An organizational employee development manager will be hired who will oversee this program and further its development. The entire District's training and development efforts will be moved from human resources to this department.

Executive Director Ciaccia interjected the comment that as some people are added, consultants would be deleted. He noted that Sondra Smalley, who dealt with Board organizational issues is no longer with the District. He stated that there is an effort to bring work that had been out-sourced back in-house.

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 18

Ms. Haqq added the information that the governmental affairs role has been created and staffed. She stated that this is where the District's diversity and inclusion program would be housed.

Ms. Demmerle continued:

The second department that was created is the Department of Watershed Programs under the direction of Frank Greenland. This department combines the areas of watershed groups, which was found in engineering, with those of health and the environment. Those areas include water quality industrial surveillance, environmental services and analytical services. These were formerly found in Operations. The focus will be on the District's stormwater program efforts as well as its combined sewer overflow program.

Other organizational changes include moving records management from information technology to the legal department. A contract compliance manager will be hired to oversee and further develop the District's MBE/WBE program. That person will work closely with the purchasing department.

Concerning the District's internal audit function, Mr. Wasco, the internal audit manager, will report to Deputy Executive Director Bucci. In the areas of safety and security Mr. Davidson has assume some oversight on health and safety efforts within the District. The new safety department will focus on health and safety training of the employees as well as develop and implement procedures for compliance with federal and state regulations.

The purchasing department will be expanded. It will proceed with a more centralized purchasing function. This is an effort to control the procurement and contracting process. A policy and procedure manual will be developed which will encompass all procurement activity within the District.

Mr. Brown expressed his appreciation for the organizational changes.

Ms. Demmerle continued with a discussion of the budget process for the year, stating that it was very similar to what has been done in previous years. Each budget center departments submitted its budget request to finance which compiled the information. The requests totaled \$105 million.

The Director of Finance completed a line by line review of all the budget centers. This was also done by the Deputy Executive Director and the Executive Director. After two reviews, the budget was cut to the proposed figure of \$98.7 million.

A Board presentation on the proposed budget follows this review, which is being done at this meeting. The next step will involve a Board review by three Board members which

BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 19

must be completed prior to the next Board meeting. The final budget will be submitted for approval at the March 20<sup>th</sup> meeting.

Cost control efforts include a system available to all budget center heads allowing them to review their budgets, look at what is spent as a tool to implement better planning for the year. Finance continues to review all personnel requests for the appropriation of funds before the Executive Director approves them.

As previously mentioned, a centralized purchasing function will be implemented. Operating procedures will be standardized regarding professional services, engineering contracts, and emergency contracts.

In considering the financial overview Ms. Demmerle stated that she would address how the District ended the year, its cash position at the end of the year, and the proposed 2008 operating and capital budgets.

In 2007 the District did fall within its rate study; actually, the District was below its rate study by approximately \$2.9 million.

Ms. Demmerle referred to a chart which depicted the last five years and showed that the District has consistently come within its budget. The primary reason for falling within budget this year is that all open positions were not filled. There were 660 positions budgets, but only 620 were filled in 2007.

The District is on an accrual basis of accounting, so not all 2007 invoices have been recorded; however, it is anticipated that the District will still be under budget once all invoices are in. Also, any excess of revenues over expenses is transferred to the District's capital account to offset any future borrowing on the capital program.

The rating agencies will continue to look at the District's debt service coverage because it will be going to the bond market more often. The goals for debt service coverage are higher than what is required. The District's net revenue available for debt service of \$74.7 million did exceed its coverage on debt service payments on its bonds. The goal was 125%. The District came in at 616%. Considering the net revenue available of \$74.7 million, that must be more than 125% of the \$12 million on the District bonds.

The same is applicable with debt service payment. On all District debt, which is bonds, and the low interest loan program, the net revenues must be more than 105% than the debt service payments. The District has exceeded that goal at 133%.

In referencing a table, Ms. Demmerle stated that it is a great indicator to the rating agencies that the District is not overextended on debt and will continue to have a

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 20

favorable rating on bonds when the District returns to the bond market. This coverage is monitored annually as will the bond market.

The cash balance was very steady at the end of 2007. The increase in revenue was due to the \$120 million bond issue that was issued in May 2007. That has not been spent. Approximately \$110 million remains, thus accounting for the large increase in revenue. It is anticipated that the cash balance will remain steady. It is projected to end the year at \$240 million.

The proposed operating budget shows projections within the District's rate study. There will be a slight increase in revenue resulting from earnings on investments. At the time of the rate study, a lower interest on investments had been predicted than is currently being received. Also, expenditures on watershed programs are being reimbursed. Since this is not capital monies, but rather operating monies, the reimbursement appears in the operating account.

The District's total revenue is \$169.5 million. User charges account for 98%. The City of Cleveland is the District's largest billing agent, and they bill approximately 84 percent of the revenue that is collected.

Operating expenses are budgeted \$98.7 million which is only 3% over last year's budget. Salaries, wages and benefits, and utilities account for 70% of the budget. Operation uses 59% of that budget. Operations is very dependent on staffing and utilities as a major part of its budget.

Current outstanding contracts total approximately \$90 million. The 2008 capital plan is \$156 million, which equates to \$246 million in capital requirements. It is anticipated that only \$131 million will be spent as cash out the door. This is a change from the District's method of appropriating funds. In the past the District would always appropriate 100% of its current outstanding contracts and 100% of its capital plan. This method never gave a true picture of the District's actual cash out the door.

Since the District is not relying as much on loans, instead utilizing the bond market, there is a need to have good cash flow projections because of the spending requirements on bonds as well as determining the timing of the financing. Therefore, of the \$246 million that is required, only \$131 million is forecasted. Finance is working with engineering to firm up the numbers and will have a better projection at the next Board meeting.

Executive Director Ciaccia added, for the record, that he wants to hedge for the prediction for the end of the year, due to the challenge of cash flow forecasting. Mayor Longo asked the Executive Director as to when the District would begin implementation of stormwater management. Executive Director Ciaccia replied that it is slated for 2009.

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 21

Upon a comment by Mayor Longo, Executive Director Ciaccia stated that it must be determined whether stormwater management would be a separate account as it will have a different funding source.

Mayor Starr inquired as to whether RFPs are obtained for bond counsel and underwriters when going to the bond market. Ms. Demmerle responded that later in 2008 there will be an RFP for all services including bond counsel, financial advisors, and underwriters. It will all be under an RFP the next time the District goes to the bond market.

Ms. Demmerle summarized that the funding for the capital program will be mainly from the beginning cash balance, part of which is the 2007 bond issue. The District will also utilize the low interest loans. The District has a maximum available of \$35 million, but with that and the cash projections, it is anticipated that the District will not go to the bond market this year.

Ms. Demmerle turned the discussion over to Greg Binder. Mr. Binder spoke, as follows, on the capital plan and significant upcoming projects:

The capital plan is a ten-year plan broken up into a four-year plan and a six-year plan. The first four years were broken out because there is a rate structure in place through 2011. That rate structure will permit the District to spend approximately \$520 million in capital projects in those four years. The District may spend \$511 million through its existing rate structure for the next four years.

The six-year capital program totals an additional \$1.5 billion. That is divided among treatment plants, construction of combined sewer overflow programs to support the District's long-term control program, interceptor rehabilitation, information technology projects, and other projects.

Approximately two and a half years ago the Board authorized the completion of facility planning evaluations at the Easterly and Southerly Wastewater Treatment Plants. The purpose was to study the plants and analyze their needs for the next thirty years. The initiation of the design of those facility planning recommendations at both plants will begin this year.

The District proposes to purchase the new fluidized bed incinerators for Southerly this year. That project will be the largest project for this calendar year. The purchase of the incinerators will total approximately \$40 million. The installation, which will occur in 2009, will total approximately \$70 million.

Concerning projects at the Westerly Wastewater Treatment Plant, there is a District interceptor directly adjacent to the plant that will be undergoing rehabilitation as it has

## BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 22

popped the shoreway crossing. This will go out for re-advertisement in the next few weeks.

Concerning the District's interceptors, the Board has authorized the construction of the Vista Branch sewer which is part of the final long-term improvement to the correct the problem that the Board has dealt with over the last few months. Also, improvements are planned for the Spring-Jennings area to correct a flooding problem. Improvements will be made to a regulator which will minimize that problem. These improvements should be completed this year.

Interviews have been completed for an asset management consultant. A recommendation will be made to the Board in March for this consultant.

A draft is being completed for a request for proposals for a program management consultant. This will go before the Board in March as well. Also, early this summer proposals will be taken for completion of the West Creek Stream Restoration Project which went into design approximately a year or a year and a half ago. Mr. Binder ended his portion of the presentation.

Mr. Brown commented on the large total - \$1.5 billion – over ten years. Mr. Brown emphasized the need to have a project delivery system that works, that would hold all parties accountable, and that is able to mitigate against the impacts of inflation. He stated that when projects are deferred, it ultimately costs the District more to complete. He also stated that project management is a critical issue. If 10% of costs were saved based on a better project delivery model and not dealing with the effects of inflation then \$150 million would be saved and could be put to work elsewhere.

Ms. Demmerle continued with the information that 2007 finished with positive variances. The cash balances continue to remain steady for the year. The 2008 proposed budget is in line with rate study projections. The District will not need to go to the bond market this year which allows the District to continue to meet its debt coverage for 2008.

Mr. Brown and Ms. Kelly volunteered to review the budget. Mr. Liberatore was assigned the review task as well.

Mayor Longo asked what effect foreclosures and vacant properties have had on the revenue flow. Ms. Demmerle responded that there was an increase in revenue, but the consumption remained steady for the year. It was anticipated that there would be a decrease in consumption, but this was not the case. Consumption has remained steady as opposed to what it was last year. Ms. Demmerle reported that there has been an increase in write-offs. Write-offs are accounts that are six years old and older. This would be related to foreclosures and abandoned properties. She believes that there will be an

BOARD OF TRUSTEES

Regular Meeting

February 21, 2008

Page 23

increase in the number of write-offs because of those issues. Mr. Bucci added that part of the District's rate increase does go for delinquencies. Ms. Demmerle stated that this is accounted for in the rate study. Mayor Longo commented that the situation concerning housing stock is extraordinary and that it is interesting that consumption has remained the same.

Mayor Starr asked if in regard to the bond market if there was any benefit to refinancing. Ms. Demmerle replied that the District refinanced the 1995 bond issue in 2005 and there is no advantage to refinancing the bond that was reissued in May.

VIII. Open Session (no items on agenda)

IX. Public Session (no requests from the public)

X. Executive Session

Mr. Brown indicated there were three matters for discussion at executive session including personnel matters and litigation matters.

**MOTION** - Mr. Sulik moved and Ms. Kelly seconded the motion to specifically designate discussions regarding Esperon vs. Northeast Ohio Regional Sewer District and the discussions regarding an appropriation of an easement and litigation matters involving 3320 Woodland Avenue Limited and Chapek Parkway as confidential pursuant to the Ohio Revised Code Section 102.03(B), and as protected communication under attorney-client privilege. Without objection, the motion carried unanimously.

**MOTION** – Ms. Kelly moved and Mr. Sulik seconded the motion to go into Executive Session. Without objection, the motion carried unanimously.

Board met in Executive Session from 2:33 p.m. until 3:13 p.m.


XI. Approval of Items from Executive Session (if any)

Chairman Brown reconvened the Board session and stated that as a result of discussions in Executive Session there was an add-on resolution and asked for a motion to adopt Resolution No. 70-08.

**MOTION** – Mayor Longo moved and Mr. Sulik seconded the motion to adopt Resolution No. 70-08. Without objection, the motion carried unanimously.


XII. Adjournment

**MOTION** – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Longo moved and Mr. Sulik seconded the motion to adjourn at 3:15 p.m. Without objection, the motion carried unanimously.



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Dean E. DePiero, Secretary  
Board of Trustees  
Northeast Ohio Regional Sewer District



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