

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
MARCH 1, 2012

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

I. Roll Call

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

ABSENT: G. Starr

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

II. Approval of Minutes

MOTION – Mayor Bacci moved and Mr. O'Malley seconded that the minutes of the February 16, 2012 Board meeting be approved. Without objection, the motion carried unanimously.

III. Installation of Board Members with New Terms

Mr. Brown welcomed Mayor DeGeeter to the Board. He advised that Board members Sulik, O'Malley and DeGeeter were to be sworn in at today's meeting. Their terms will expire on March 1, 2017.

Director of Law, Marlene Sundheimer administered the Oaths of Office to Board members Sulik, O'Malley and DeGeeter.

IV. Election of Secretary

Mr. Brown advised that due to the departure of Mayor DePiero the Board has a vacancy for the role of Secretary to the Board. Mr. Brown indicated that he requested that Mr.

Sulik serve as Committee Chair to make a recommendation to this Board as to the appointment of Secretary.

MOTION – Mr. Sulik moved and Mayor Bacci seconded the motion to nominate Ms. Kelly as Secretary to the Board. Without objection, the motion carried unanimously.

V. Governance Committee Appointment and Appointment of Chair

Mr. Brown advised that the Governance Committee meeting was previously scheduled for today, but due to the departure of Mayor DePiero, former chair of said committee, the meeting was rescheduled to March 15th. Mr. Brown appointed Mayor DeGeeter to the Governance Committee. Mr. Brown advised that he will temporarily serve as Committee Chairman until such time that a permanent appointment is made.

Mr. Brown advised that the Governance Committee will be taking action on recommendations and findings from the Audit Committee that will be incorporated into the Board's Bylaws.

VI. Public Session

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

VII. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the KMM&K litigation matter. A court date has been scheduled for October 2012. Executive Director Ciaccia advised that settlement discussions are ongoing.

On February 22nd, Executive Director Ciaccia and Director of Engineering, Kellie Rotunno, met with John Kenny, principal of Kenny Construction, which is part of the KMM&K joint venture. Executive Director Ciaccia commented that those discussions went well.

On February 27th, District representatives participated in mediation. Executive Director Ciaccia indicated that it went well and that tentative agreements were made which will be discussed further in Executive Session today.

Executive Director Ciaccia noted that all parties desire a resolution on this case.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program litigation ("SMP litigation"). Judge Pokorny listed four

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outstanding issues to be addressed prior to rendering his final opinion. The District's proposed response to Judge Pokorny's ruling will be presented to the Board during Executive Session. Judge Pokorny scheduled all parties to appear in Court on March 19th to discuss those issues.

Executive Director Ciaccia moved to the next report item regarding stormwater efforts going forward. Last week, Executive Director Ciaccia, Ms. Sundheimer, Director of Watershed Programs, Frank Greenland, and Manager of Watershed Programs, Kyle Dreyfuss-Wells, met with representatives from the Cuyahoga County Board of Health (CCBOH) to discuss future interactions related to stormwater. Executive Director Ciaccia then turned discussion over to Mr. Greenland to provide the Board with an overview of those discussions.

Mr. Greenland stated that discussions at the meeting with the CCBOH included the District's assistance to the member communities with the Phase II stormwater regulations. The CCBOH and the Soil and Water Conservation Districts (SWCDs) currently provide assistance to the communities for the compliance with some of the minimum controls in the Phase II stormwater regulations including illicit discharge detection and elimination, good housekeeping for municipal operations and public information/education.

Mr. Greenland advised that good discussions were held and that the aforementioned agencies desire forming partnerships with the District. Mr. Greenland explained that the District had previous discussions with the CCBOH, Summit County Board of Health (SCBOH), and Cuyahoga County and Summit County Soil and Water Conservation Districts to essentially implement programs into the District's SMP. The District is considering subcontracting to those agencies since they already provide good services to member communities. The District proposes covering the program costs associated with those services. Mr. Greenland noted that those costs were already included in the District's initial SMP financial plan.

The second item for discussion at the meeting between the District, CCBOH and SWCDs included septic tank conversions. There are many failing septic tanks remaining in Cuyahoga County. Homes with failing septic tanks should be connected to nearby sewers. The costs associated with connecting to sewers typically become the property owner's financial responsibility which has often times results in judicial proceedings due to financial hardship. It has been requested that the District form a partnership with the CCBOH to provide financial assistance to help move these cases forward in an effort to quickly connect to a sanitary sewer system.

Mr. Greenland advised that the District needs to obtain further details about the proposal and believed that it might be good for the District to get involved in order to get these

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failing systems offline and connected to the sewers. Staff will bring its proposal back to the Board for consideration.

Mr. Brown questioned if the CCBOH has jurisdiction over septic systems. Mr. Greenland replied that they have jurisdiction and will issue orders on failing septic tanks.

Mr. Brown indicated that he was of the understanding that the Code requires property owners within a certain distance of local sanitary systems to be connected to the system and that this was not optional.

Mr. Greenland clarified that if a septic tank is within 200 hundred feet of a sanitary system, then the property owner is required to connect to that system. The order is issued by CCBOH to the property owner and in some instances homeowners have sited economic hardships which ultimately delay the connection since those cases typically result in court proceedings. In an effort to expedite those cases, the CCBOH inquired whether the District would assist by providing a financial mechanism to those property owners given their economic situations. Mr. Greenland assured that those property owners will still be required to pay.

Mr. Brown advised that it may not be prudent for the District to get into the business of financing septic tanks. The Board of Health has jurisdiction over septic tanks whereas the District is required to enforce its code over regulated local sewers. Mr. Brown advised that there really is no issue that would require the District's enforcement. Mr. Brown indicated that he understood the environmental concerns but that the District should proceed with caution.

Mr. Greenland explained that the District has only committed to open discussion at this point. The District is waiting to obtain further details on the proposal before deciding whether to bring this matter to the Board for consideration.

Mr. Brown commented that the remedy is to determine whether there are other funding opportunities through the County or some other state agency to assist those property owners being required to connect into the sanitary systems. Mr. Brown inquired as to which agency is responsible for septic tank discharges into the environment which can impact the quality of life of the surrounding properties.

Mr. Brown reiterated that the District should proceed with caution and make sure that the responsible parties are fulfilling their obligations. If the District desires conducting its due diligence to facilitate an outcome and so long as the District is not taking on the financial responsibility of said outcome, then that would be acceptable.

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Mr. Greenland stated that he appreciated Mr. Brown's comments and he advised that the District desires obtaining further details from the CCBOH to determine whether the District should consider getting involved. Mr. Greenland assured the Board that the District made no commitments.

Ms. Kelly commented that it may shed a negative light on the District if it does not participate given the environmental concerns. Ms. Kelly noted that the District should not be solely responsible for the remedy to those issues.

Mr. Greenland replied that unfortunately it takes time to get sources of pollution such as illicit discharges and failing septic tanks remedied. That does not necessarily mean that the District has to "get into the game," but those pollution sources cause high levels of bacteria in our regional streams and create other environmental problems which the District needs to take into consideration when determining its role.

Mr. Brown commented that although he was in agreement with the points raised by Ms. Kelly, the District does not have an abundance of reserves to fund the connection of failed septic tanks into the sanitary systems. Rates were raised in order to fund specific programs and often times the District is viewed as "an agency with deep pockets" which is not the case. Indeed, there are environmental concerns; however, there are certain laws put in place that govern compliance over those issues. Mr. Brown agreed that this situation needs to be remedied and that we need to move away from simply discussing the problems and move towards a solution.

Executive Director Ciaccia commented that relevant points were made during this discussion and that he too agreed with Ms. Kelly's concerns. Executive Director Ciaccia indicated that his intent of bringing this matter to the Board at this time was to inform this body of those discussions which have taken place and to obtain feedback at the onset. Executive Director Ciaccia assured that the District will tread lightly. If the District finds that there are reasonable means for its involvement, then it will bring this matter back to the Board for consideration.

Executive Director Ciaccia moved to the last report and he advised that the District's 10-year financial plan was distributed to the Board members at today's meeting. A draft of this plan was previously given to Board members at the Finance Committee meeting on February 28th.

Executive Director Ciaccia pointed out revisions that were made to the 10-year financial plan. Executive Director Ciaccia referred to the Capital Improvement Program (CIP) chart of projects slated over the next 10 years, which was on page 10. The CSO projects were transposed with the non-CSO projects because the District is committed to the CSO

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projects through the consent order and therefore those are considered fixed capital costs. The District can use its discretion with respect to non-CSO projects.

Executive Director Ciaccia noted that non-CSO projects represented by green bars are existing contracts and will be funded through the current rate cycle whereas the District has not yet committed to non-CSO projects for the years 2016 through 2021.

Executive Director Ciaccia explained that in the draft distributed on February 28th there was an error on page 30 which was an understatement of the debt coverage for 2013 through 2021. Executive Director Ciaccia pointed out that the corrected numbers show that the District's debt service coverage through 2021 will be substantial as the District carries out Project Clean Lake and other construction projects. Executive Director Ciaccia noted that the updated debt service ratios for senior debt and total debt were listed on page 28.

Executive Director Ciaccia explained that the District's 10-year financial plan is geared towards those important metrics. Limits are placed on the District by bond holders and debt holders and the District anticipates keeping those ratios above the required levels.

Executive Director Ciaccia concluded by stating that this is a very important plan that District will be gauging against over the next several years and that it will be updated annually.

Mr. Brown commented that the debt coverage schedule suggests that the District's future revenue sources are committed. Executive Director Ciaccia affirmed and stated that the District anticipates five additional bond issues over the next 10-years as well as obtaining state loans where applicable. Executive Director Ciaccia noted that given the District's current financial situation, bond issues are more attractive than state loans. The District however will accept state loans since it assists with the WRRSP (Water Resource Restoration Sponsor Program) projects.

Mr. Brown commented that this is in correlation to his previous comment that the District does not have deep pockets and that these amounts are committed. Executive Director Ciaccia replied that the District has "big obligations" and that District's "pockets are only as deep as you will raise the rates."

VIII. Action Items

Authorization to Advertise

Resolution No. 52-12 Two (2) year requirement contract to purchase chemicals and supplies for microbiological testing. Anticipated expenditure: \$36,000.00.

Resolution No. 53-12 Two (2) year requirement contract for the removal and disposal of grit and screenings from the Easterly, Southerly, and Westerly WWTPs. Anticipated expenditure: \$894,000.00.

MOTION – Mr. O’Malley moved and Mr. Sulik seconded to adopt Resolution Nos. 52-12 and 53-12. After discussion and without objection, the motion carried unanimously.

Mr. Brown inquired as to whether prevailing wage applied to Resolution No. 53-12.

Executive Director Ciaccia explained that this is strictly a hauling contract and that under Ohio law the prevailing wage requirement is limited to construction and installation of projects. Executive Director Ciaccia noted that this question was previously raised during the District’s ash hauling contract. Some past ash hauling contracts had construction projects tied to them; and therefore, the prevailing wage requirement applied to those specific contracts.

Executive Director Ciaccia clarified that the prevailing wage requirement has never been attached to the removal and disposal of grit and screenings procurement.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 54-12 2012 media and sponsorship partnerships as part of the public outreach campaign. Anticipated expenditure not to exceed \$350,000.00.

MOTION – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution No. 54-12. After discussion and without objection, the motion carried unanimously.

Mr. Brown commented that in light of the consent decree it was important for the District to establish affordability programs as well as conduct the outreach and marketing

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necessary in order to ensure that the public was knowledgeable of the available programs. Mr. Brown suggested a metric be established to measure the District's success rate.

Executive Director Ciaccia replied that the District has engaged in outreach efforts as it relates to the consent decree and affordability programs. In 2012, the District will be conducting a customer survey to gauge the effectiveness of said outreach which will enable the District to better design its outreach programs going forward.

Mr. Brown commented that although the economy is "turning around" the senior citizens within the greater Cleveland community "will tell you differently in terms of the choices they have to make." Mr. Brown advised that he sits on the Board of the Cleveland Food Bank and there are significant impacts of hunger affecting people who normally do not seek support and meals. For example, Bay Village is up 30% to 40% with respect to people seeking out food pantries and going to centers in order to obtain food. Mr. Brown stated that "everyone is feeling the effect of the economy."

Mr. Brown noted that senior citizens have become cautious about providing their personal information such as income and other information necessary in order to be considered in the District's program. The District must work through those barriers in order to ensure that those people who qualify for programs are taking the initiative.

Director of Administration and External Affairs, Constance Haqq, explained that the District contacted the Department on Aging and obtained a comprehensive list of senior citizens in our service area. District representatives will continue its outreach efforts. Customer Service has experienced an influx of inquiries from senior citizens whom are interested in the District's programs.

Mr. Brown indicated that given the number of mayors sitting on this Board, that this Board should be familiar with the benefit banks which inform senior citizens of the programs that they may be eligible for. Mr. Brown wanted to ensure that the District was educating the public on the types of programs available because it may relieve some potential financial hardships.

Mayor Bacci commented that often times "pride gets in the way." Mr. Brown agreed and he explained that was his reason for dwelling on this issue because he has witnessed this occurrence.

Executive Director Ciaccia stated that although we are pleased to learn that the economy is doing better at the same time water and sewer rates are increasing. Over the next 10 years, water and sewer rates will rival those of electric and gas. Executive Director Ciaccia stated that water is no longer going to be undervalued as seen over the past few decades and the District will "get more into programs like these just as the other utilities,

gas and electric do.”

Authorization to Purchase

Resolution No. 55-12

Direct purchase from Horsburgh & Scott to repair Second Stage Return Sludge Pump Gearboxes at the Southerly WWTP. Anticipated expenditure not to exceed \$200,000.00.

Resolution No. 56-12

Direct purchase from Moyno Industrial Products the replacement parts for the Moyno pumps in operation at all District WWTPs. Cost not to exceed \$100,000.00.

MOTION – Mayor Bacci moved and Mayor DeGeeter seconded to adopt Resolution Nos. 55-12 and 56-12. After discussion and without objection, the motion carried unanimously.

Mr. Brown requested an explanation on Resolution No. 55-12.

Mr. McNeeley replied that the return sludge pumps at Southerly are a critical process component and that the lead time on the repair of the gearbox is approximately 12 weeks. During the annual preventative maintenance inspection performed in December it was discovered that there were problems with three of the seven gearboxes which need to be repaired.

Executive Director Ciaccia added that there was much internal discussion as to the appropriate method of going forward with said procurement since there were other companies that could potentially bid on this procurement.

Mr. Brown inquired as to what made this vendor special.

Mr. McNeeley explained that this particular vendor is the original equipment manufacturer and therefore has an understanding of the specifications, materials and instructions which will decrease the lead time since there will not be a “learning curve.”

Authorization to Enter Into Contract

- Resolution No. 57-12 Contract with Raftelis Financial Consultants for professional consulting services for the Stormwater Management Program and Billing Database Development Phase II Project. Cost: \$879,792.00.
- Resolution No. 58-12
(WITHDRAWN) Two (2) year requirement contract with Environmental Express for laboratory filters. Cost: \$103,874.00.
- Resolution No. 59-12 Two (2) year requirement contract for elevator maintenance services with ThyssenKrup Elevator Corporation for Westerly WWTP and GJM. Cost: \$56,644.00.
- Two (2) year requirement contract with Schindler Elevator Corporation for Easterly and Southerly WWTPs and EMSC. Cost: \$117,835.20.
- Resolution No. 60-12 One (1) year contract with Oracle, America, Inc. for annual maintenance and support of the Oracle databases and Oracle eBusiness application. Cost: \$133,768.69.

MOTION – Mr. O’Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 57-12, 59-12 and 60-12. Resolution 58-12 was held. After discussion and without objection, the motion carried unanimously.

Mr. Sulik referred to Resolution No. 58-12 and questioned as to why the contract was not being awarded to the lowest bidder.

Executive Director Ciaccia explained that the lowest bidder, EMD Millipore Corporation, was non-compliant in that they made changes to their bid specifications. It was recommended not to award the contract to the second lowest bidder, Jade Scientific, due to past performance issues. The District is therefore recommending that the contract be awarded to Environmental Express.

Mr. Brown inquired about the District’s process with respect to poor performance by a

contractor and whether in this instance there was sufficient documentation and if the contractor had been notified accordingly. Mr. Brown questioned as to whether there was a moratorium period and what steps were to be taken to reconcile this issue.

Director of Finance, Jennifer Demmerle, affirmed that documentation of the contractor's performance was on file at the District but that she would need more time to research the issue as to how long a contractor must wait before conducting business with the District.

Mr. Brown replied that since this project was performed recently he understood the District's decision to not want to engage in business with said contractor at this time; however, the District should at a minimum have a policy in place for those types of instances. Mr. Brown suggested that the District establish a timeline for performance-related issues and move towards a standard protocol rather than following an arbitrary process.

Ms. Demmerle advised that she will follow-up with the Board with respect to the District's current policy.

Ms. Kelly suggested that the Board hold Resolution No. 58-12 until such time that staff provides the Board with the proper protocol and procedure and confirms whether the contractor was notified of the past performance-related issues.

Ms. Demmerle advised that Jacqueline Williams was present to the address the Board's concerns.

Executive Director Ciaccia advised Ms. Williams that the Board would like to know the District's protocol for rejecting contractors based on performance-related issues and whether the District notifies those companies and keeps documentation on file.

Mr. Brown questioned whether there is a specified period of time.

Ms. Williams advised that the District does not have a specified period of time and will continue to quote them; however, "they are not allowed to win this opportunity because we had such a bad experience with them over the last contract."

Ms. Williams further stated that the District does not have a policy and that "we probably need to put one in place." Ms. Williams advised that the District will "continue to quote them on individual items until we can make sure that their performance is up to par."

Ms. Kelly questioned whether the District is exposed to potential litigation since it failed to provide the contractor with advanced notification regarding their ineligibility to be awarded District projects.

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Ms. Williams confirmed that the District did not notify the contractor of their ineligibility status but did inform them of their performance and sent letters regarding the removal of certain items from the District's contracts. Ms. Williams advised that Purchasing worked with the Law Department to ensure that there was sufficient documentation supporting the District's decision to not award this project to this particular vendor. Ms. Williams advised that the Law Department advised her that she was not required to notify the vendor of their ineligible status.

Ms. Sundheimer explained that the District is allowed to award contracts to the lowest and best bidder and in this instance the third bidder was determined to be the lowest and best bidder.

Mr. Brown advised that he was familiar with the lowest and best bid requirements but that he was concerned of the District's policy of allowing the contractor to submit a proposal but then rejecting its bid based on past performance-related issues.

Ms. Sundheimer explained that State law does not require for the District to provide an explanation.

Mr. Brown advised that he understood what was required under State law and suggested that the District establish a policy.

Executive Director Ciaccia recommended moving forward with Ms. Kelly's suggestion to hold Resolution No. 58-12 until the District comes back to the Board with a policy and more definite responses to the Board's questions.

Authorization to Amend Resolution

Resolution No. 61-12

Amend Resolution No. 158-11 and adopt
2012 Operating and Capital Budget.

MOTION – After discussion, Mr. Sulik moved and Mr. Brown seconded to adopt Resolution No. 61-12. Without objection, the motion carried unanimously.

Mr. Sulik advised that the proposed budget for 2012 was reviewed on February 18, 2012 by the Finance Committee. Revenues for 2012 are budgeted at \$184 million, which represents a reduction in anticipated revenues of 5% for non-collectibles and \$2.4 million for the District's affordability program. The \$10 million revenue increase is due to the rate increases.

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Budget expenditures for 2012 are flat compared to 2011. Preliminary 2011 unaudited expenses are approximately 9% below budgeted figures. Since 2008, actual expenses averaged 6% below budgeted figures.

Mr. Sulik advised that each department was reminded that this is a budget and those figures are not goals for spending. Every effort is to be made to reduce spending.

Mr. Sulik referred to Mr. Brown's previous comments made regarding outreach efforts and marketing and he advised that with respect to the affordability program, marketing and outreach, the Department of Administration and External Affairs is expected to keep the Board apprised as to whether the District's targeted market is getting the message and responding to our programs. The outreach programs and marketing are new to the District. The District anticipates spending \$750,000 on outreach, advertising and marketing programs and staffing. The District is interested in obtaining a return on its investment. The District must reach its senior citizens and customers experiencing financial hardships. Mr. Sulik reiterated that outreach, marketing and affordability programs are new to the District and that we want to ensure that the programs are working for the District.

Mr. Sulik concluded by stating that the Finance Committee recommends adoption of the 2012 budget.

Authorization of Contract Modification

Resolution No. 62-12

Final adjustment deduct order for Stevens Painton Corporation, existing construction Contract No. 09001069, for the Train Avenue Relief Sewer Project. Cost decrease in the amount of \$205,042.18, bringing the total contract price to \$1,716,701.97.

MOTION – Mr. Sulik moved and Ms. Kelly seconded to adopt Resolution No. 62-12. Without objection, the motion carried unanimously.

Authorization to Release Proposed Changes to Title I – “Sewer Use Code”

Resolution No. 63-12

Release of proposed changes to Title I – “Sewer Use Code” of the District's *Code of Regulations* for member community review and comment.

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MOTION – After discussion, Mr. O’Malley moved and Mayor DeGeeter seconded to adopt Resolution No. 63-12. Without objection, the motion carried unanimously.

Mr. Brown requested an explanation on Resolution No. 63-12.

Executive Director Ciaccia turned discussion over to Mr. Greenland.

Mr. Greenland explained that currently Title I – “Sewer Use Code” of the District’s *Code of Regulations* (Code) prohibits the decanting of sewer jet vacs in the sewer system. Mr. Greenland advised that the District is more concerned with the dumping of “bad stuff” into the sewer system and that decanting is not necessarily considered “bad stuff.” The District’s intent was to make the Code less restrictive while still maintaining control.

Mr. Greenland advised that Frank Foley and other members from the District staff met with representatives from the City of Cleveland, Water Pollution Control, Cuyahoga County Sanitary Engineering and communities to discuss this requirement and how it may be revised in order to allow communities to decant liquids from jet vac operations to appropriate locations within the collection systems.

Mr. Brown questioned if what is being discharged was the remaining liquid from the tanks. Mr. Greenland stated that what remains in the tank is being discharged into the local sanitary or combined sewer system.

Mr. Brown questioned if this was the current practice. Mr. Greenland affirmed and explained that the District will maintain some control. Written permission will be required and the District will be advised as to the truck dewatering locations. Mr. Greenland explained that it will be less restrictive for the community.

Mr. Greenland concluded by stating that other minor cleanup revisions were made to the Code.

IX. Information Items

There were no information items.

X. Public Session (any subject matter)

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

XI. Open Session

There were no items for discussion.

XII. Executive Session

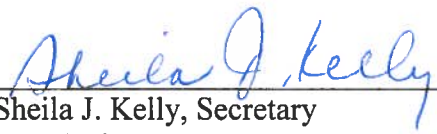
Mr. Brown stated that there were items for discussion in Executive Session.

MOTION – Mayor Bacci moved to enter into Executive Session to consult with legal counsel and District administration regarding mediation in the KMM&K litigation and proposed settlement discussions regarding the Stormwater Management Program litigation. Mayor Bacci stated that discussion of these matters in Executive Session are permitted as specific exceptions to the Public Meetings Act pursuant to Ohio Revised Code §121.22(G)(3) and he specifically designated all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(G), and attorney-client privilege. A roll call vote was taken and the motion carried unanimously to adjourn into Executive Session.

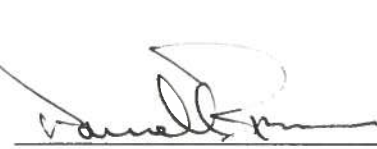
The Board met in Executive Session from 1:23 p.m. to 2:01 p.m.

XIII. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mayor Bacci moved and Mr. O'Malley seconded the motion to adjourn at 2:02 p.m. Without objection, the motion carried unanimously.



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



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