

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
MARCH 2, 2010

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
G. Starr
D. DePiero
J. Bacci
S. Kelly
W. O'Malley
R. Sulik

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

II. Oath of Office

Director of Law, Marlene Sundheimer, administered the Oaths of Office to Board members Mr. Brown and Mayor Bacci.

III. Approval of Minutes

MOTION – Ms. Kelly moved and Mr. Sulik seconded that the minutes of the February 18, 2010 Board meeting be approved. Without objection, the motion carried unanimously.

IV. Public Session

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

V. Executive Director's Report

Executive Director Ciaccia moved to the first report item. The District met with representatives from the state and federal governments on Thursday, February 25th to

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discuss the Combined Sewer Overflow Long Term Control Plan (hereinafter "CSO LTCP") and the District's commitments to the Clean Water Act. The meeting covered issues related to the technical aspects of the CSO LTCP, and according to Executive Director Ciaccia, we are getting "close to being on the same page" regarding these issues.

Executive Director Ciaccia advised that discussions are ongoing as it relates to the term of the CSO LTCP. The District initially proposed a 30-year program whereas the governments counter proposed a 15-year CSO LTCP. Although we have not yet reached a settlement with the government on the term of the program, progress has been made. Executive Director Ciaccia advised that there are penalties associated with these types of programs and that counter offers were made and we anticipate the further discussions which will transpire at the next meeting.

Executive Director Ciaccia indicated that discussion and review of the Consent Order language is taking place. The focus of the discussions will shift to this effort since the District and governments will ultimately enter into a Consent Order, which will be the guiding document of the District's CSO LTCP.

According to Executive Director Ciaccia, much progress has been made and this has been a "give and take situation." He anticipates having a better understanding of the CSO LTCP by the latter part of this year. Additional meetings with the governments are scheduled.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP"). The District continues to develop the SMP Credit Policy as well as working with the City of Cleveland Division of Water (hereinafter "CWD") regarding the SMP billing.

The District is being represented by legal counsel on two separate matters. One case is pending in the Summit County Court of Common Pleas, and one case pending in the Cuyahoga County Court of Common Pleas. The District filed a Motion to Dismiss and a Motion to Change Venue in Summit County and requested a hearing on this matter, and no hearing has been scheduled. The Summit County case remains dormant at this point.

A Case Management Conference (hereinafter "CMC") was held in reference to the case pending in the Cuyahoga County Court, and a second CMC will be held in April. The communities are submitting responses to the District's claims and some communities have requested continuances for their responses. During the CMC, Judge McMonagle advised that he would grant one 30-day time extension. Furthermore, the District entered into discussion with some of the fringe communities partially served by the District regarding potential stipulations as it relates to customers served in those communities.

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Executive Director Ciaccia advised that Summit County communities filed a petition to dismiss themselves from the case pending in Cuyahoga County Court, and Judge McMonagle has not ruled on this matter.

Executive Director Ciaccia moved to the next report item regarding state and federal advocacy services. Executive Director Ciaccia, Deputy Director of Law, Lisa Hollander, and Government Affairs Specialist, Darnella Robertson travelled to Columbus on February 22nd and February 23rd along with the District's state advocates, Matt Cox and Eric Weldele from Tucker Ellis West. They met with Chief of Staff for the Ohio Senate, Matt Schuler, Louis Capobianco and Andrew Friese from Governor Strickland's office, and Chief of Staff for the Ohio House of Representatives, A. J. Stokes. Ms. Hollander and Ms. Robertson met with Laura Powell, Assistant Director of the Ohio Environmental Protection Agency (hereinafter "OEPA").

Discussions included legislative changes. The District would like to offer its employees additional deferred compensation programs; however, it is limited to two providers whereas many entities throughout the state of Ohio are allowed to offer their employees more than two deferred compensation programs.

Discussions also included legislative changes as it relates to the SMP. In order for the District to receive conservation easements, it would be required to go through the communities. The District believes it would be more efficient to have the ability to grant conservation easements associated with the SMP. The District desires clarification of its right-of-entry powers and is seeking the ability to enter property for stormwater projects. If a property owner receives proper notification and is non-responsive, the District would like to have the authority to enter private property in order to clean or remove obstructions. Executive Director Ciaccia advised that these are important issues that will need to be addressed as the District moves forward with the SMP.

Another issue that would benefit the SMP and the CSO LTCP is to provide the District with greater appropriation authority. The District desires having the ability to move on eminent domain more quickly since it will be required to get CSO LTCP projects out in a timely manner under the Consent Order. This will be an additional tool that will assist the District with meeting those important commitments. Executive Director Ciaccia speculated that it will be harder to sell this idea to the legislatures. The District will need to educate and lobby individuals within the Senate and House of Representatives in order to get this issue through the legislature.

The District is also requesting legislation in order to provide the District with the authority to carry out design/build projects, which may be beneficial to the CSO LTCP projects. The Board of Hospital Commissioners proposed language which allows them to perform design/build, and from a construction standpoint, the District desires having this

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in its toolbox as well. The design/build method has been described as an efficient and cost-saving initiative; Executive Director Ciaccia advised that the design/build method could also help the District meet its scheduled obligations per the Consent Order. Executive Director Ciaccia indicated that there are no immediate District projects that would benefit from design/build, but it would be in the best interest of the District to have the design/build option available to us in the future.

Executive Director Ciaccia stated that the District's proposal was well-received; however, Mr. Stokes indicated that the House of Representatives may have some concerns. In particular, labor groups have not embraced the design/build process, and Executive Director Ciaccia indicated that he had discussions with Mr. O'Malley concerning this issue. At this point, the District is unsure as to how it will proceed with the design/build initiative.

Executive Director Ciaccia indicated that the District desires increasing the competitive bid amount from \$25,000 to \$50,000 since most agencies have moved to this threshold. If the competitive bid amount is increased, the District will continue obtaining three (3) quotes, but this increase will increase the efficiency of District operations.

The District desires having the ability to prequalify its bidders in order to expedite the procurement process as well as debar contractors that have defaulted or failed to perform with the District. Executive Director Ciaccia informed the Board that since the District is receiving many bidders, experience clauses have been incorporated into the contracts in order to ensure that we are attracting qualified contractors, but "this leaves the door open for dispute." The District being able to prequalify on certain jobs will work in our favor and allow the District to carry out projects in a timely manner.

Executive Director Ciaccia advised that District representatives went to Columbus with this agenda and whether these items are going to make it through the legislature is unknown. Some of the issues may be attached to existing bills and others may require a separate bill.

Executive Director Ciaccia moved to the final report item and he advised that the District is planning a trip to Washington D.C. during the week of March 8th to meet with our national delegation. According to Executive Director Ciaccia, Mr. Brown indicated that he may be able to attend. Executive Director Ciaccia expressed his desire of having at least one more Board member present in Washington D.C. Executive Director Ciaccia advised that he has travelled to Washington D.C. twice and he would go again; however, he believed it would be beneficial to "show some new faces."

Mr. Brown referred to discussion regarding design/build for construction projects and how this would apply to the District's CSO LTCP. He understood that design/build may

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be advantageous to projects having a particular timeframe for completion, but there is now something called "CM at Risk" (construction management at risk) which may also apply to District projects. Mr. Brown understood that CM at Risk joins the expertise of a design architect with a construction expert, and they are given the flexibility to be creative in their design approach. Mr. Brown commented that this has been an effective approach and is the next step beyond design/build. Mr. Brown inquired whether the District would benefit from CM at Risk.

Director of Engineering and Construction, Kellie Rotunno, replied that this is a tool that we want to have at our disposal. We need to first overcome the regulatory hurdles on the design/build front before we can delve into creative contracting models. Ms. Rotunno stated that the District could benefit from the design/build method from a scheduling perspective and that stormwater and stream renovation projects could benefit from innovative thinking between the contractor and designer. After overcoming regulatory hurdles, the District can make good strides and create business opportunities for small business enterprises (hereinafter "SBEs").

Mayor Starr commented that it was a good agenda that overlaps with the other government entities, and he inquired if we have a coalition approach on some of these issues. Executive Director Ciaccia advised that we have not yet developed a strategy, but "that is something that we are going to have to do." A representative from Governor Strickland's office suggested that the District apprise the Cleveland delegation of the issues, and the District would like to educate this group in Columbus.

Mayor Starr questioned, "What are you looking to do with eminent domain? Is it a time element? Time is money?" Ms. Sundheimer replied that the quick-take concept is a time factor. For example, the Ohio Department of Transportation (hereinafter "ODOT") has limited quick-take authority. The appraised value of a property is placed into escrow as you go through the court process to determine final damages, and in the meantime, the project can move forward. The District's current process is more time consuming. For example, we must first go through the appraisal process, make an offer, negotiate and then file in court if negotiations fail. This can take a year, if it is a contested appropriation action. Ms. Sundheimer stated that the District is interested in saving time by having the authority to move forward with the project as it works through the compensation issues.

Mayor Starr commented that this "would make a lot of sense" and that "we have used quick-take on state highways with federal monies and it is a right-of-way for public transportation improvement." The logic is to determine how this process would extend to the environment, sanitary or storm sewers.

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Ms. Sundheimer explained that the authority comes from the state of Ohio Constitution, and the State can grant the authority to these agencies only in exigent circumstances. Highways and building of highways have always been considered emergency measures. Ms. Sundheimer was unsure whether this would apply to building sewers. The District's argument is that it will be under a Consent Order and time schedule, and we will have to work with the OEPA or some federal agency to demonstrate or justify exigent circumstances.

Mayor Starr commented that this could also apply to our SMP initiative and trying to gain access rights to private property. Ms. Sundheimer explained that the District is seeking more authority through legislative changes to enter private property for maintenance and inspection purposes. The quick-take approach does not apply directly to right-of-entry situations, rather to when we are actually taking another's property rights.

Mayor Starr inquired as to what prompted the District to seek alternative deferred compensation providers and then he requested the names of the agencies that currently provide the District with those services wherein Ms. Demmerle replied Ohio Deferred Compensation and ING.

Mayor Starr questioned, "you want to expand it to whom?" Executive Director Ciaccia replied that another provider presented Deputy Executive Director, Michael Bucci, and himself with a sales proposal about their particular product. At this point, they learned about the current limitations on the District as it pertains to deferred compensation providers. Executive Director Ciaccia and Mr. Bucci felt that the District should be unlimited like other agencies.

Mayor Starr agreed that this was a good idea since Nationwide, in the State of Ohio, only provides employees with 15 funds to choose from when there are actually 25,000 mutual funds. Increased competition will be better especially as it relates to expense ratios. Executive Director Ciaccia agreed. Mayor Starr commented that the public employees deserve competitive wages and benefits.

VI. Action Items

Authorization to Advertise

Resolution No. 59-10 Two (2) year requirement contract for Crain inspection and maintenance at all Wastewater Treatment Plants and Pump Stations. Anticipated expenditure: \$107,000.00.

Resolution No. 60-10 Two (2) year requirement contract for grit and screenings disposal at all Wastewater Treatment Plants. Anticipated expenditure: \$605,000.00.

MOTION – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution Nos. 59-10 and 60-10. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 61-10 Office supplies from the State Term Schedule for all District facilities. Cost not to exceed \$110,000.00.

MOTION – Ms. Kelly moved and Mayor Starr seconded to adopt Resolution No. 61-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 62-10 Contract with Aquatic Macroinvertebrate Taxonomy for Benthic Macroinvertebrate identifications. Cost: \$33,600.00.

Resolution No. 63-10 Two (2) year requirement contract with Fisher Scientific Co., LLC for the purchase of dry chemicals for the Analytical Services Department. Cost: \$37,144.17.

Resolution No. 64-10 Two (2) year requirement contract with Hach Company for the purchase of laboratory chemicals for the Analytical Services Department. Cost: \$56,242.42.

- Resolution No. 65-10 Two (2) year requirement contract with VWR International, LLC for the purchase of microbiologicals used for microbiology testing and identification. Cost: \$39,234.72.
- Resolution No. 66-10 One (1) year requirement contract with Polydyne, Inc. for the purchase of 70,000 pounds of liquid polymer for use in the sludge dewatering centrifuge process at the Westerly Wastewater Treatment Plant. Cost: \$171,690.00.
- Resolution No. 67-10 One (1) year requirement contract with PVS Chemical Solutions, Inc. for 150,000 gallons of liquid sodium bisulfite solution for use at all Wastewater Treatment Plants. Cost: \$152,460.00.
- Resolution No. 68-10 Two (2) year requirement contract with Zinkan Enterprises, Inc. for boiler treatment and cooling tower service at all District facilities. Cost: \$102,750.00.
- Resolution No. 69-10 Contract with Marous Brothers Construction, Inc. for the Combined Sewer Overflow Rehabilitation Contract – Early Action Project (CSORC-EAP). Cost: \$2,794,995.00.
- Resolution No. 70-10 Contract with Noetix Corporation for the annual software maintenance and support of Noetix reporting software. Cost not to exceed \$36,060.00.

MOTION – Mr. Sulik moved and Mr. O’Malley seconded to adopt Resolution Nos. 62-10 through 70-10. After discussion, the motion carried with one abstention from Mayor DePiero on Resolution No. 68-10.

Ms. Kelly referred to the SBE participation of 8% on Resolution No. 69-10, and she inquired how that goal was determined. Ms. Rotunno replied that SBE goals are established on a project-by-project basis and that the work components of each project are broken down into various elements such as cleaning lining and site restoration. The

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District cross-references the SBE directory to determine the number of SBEs that provide those types of services. Achievable goals are then established. For the Combined Sewer Overflow Rehabilitation Early Contract – Early Action Project (hereinafter “CSORC-EAP”), there were no certified SBEs that could provide some of the specialty services on this particular contract, which had an impact on the SBE goals.

Ms. Kelly inquired if the District could have located additional contractors that provide those special services through outreach measures. She questioned if “there could also be some other work in there that could also be awarded to SBEs?” Ms. Rotunno replied that “every contractor self-performs different aspects of the contract.” For instance, Marous Brothers, the contractor for the CSORC-EAP contract, will not self-perform certain project components such as the specialty lining, piping, the pipeline, the paving, the trucking, photography and some of the materials being supplied, bringing them to performing 41% of the overall project

Ms. Kelly questioned, “what would stop them from doing the paving?” Ms. Kelly requested clarification on how the SBE goals are established for District projects. It was her understanding that the District compares project components to the list of certified SBEs in order to determine which SBE firms are able to perform certain aspects of the work. She inquired if the SBE goals are then established after this process. Ms. Rotunno affirmed.

Ms. Rotunno informed the Board that there are certified SBEs that are capable of performing the work as a general contractor. For instance, the second lowest bidder on this project was Nerone & Sons, which is a certified SBE with the District. The cure-in-place liner installation comprises almost 41% of the work under the CSORC-EAP contract, and there are no SBEs certified with the District capable of performing this highly specialized work and therefore 41% of the job is immediately off the table.

The contractor installing the liner is not going to prime the job and there was a need for a prime contractor. The bidders’ proposals of self-performance versus subcontracting are based on profit margins. Ms. Rotunno explained that the SBE goals are established based upon our engineers’ view of the project and how that compares with our SBE registry.

Ms. Rotunno stated that the contractor exercised good faith in his bid and actually exceeded the District’s goal on a project where a high percentage of the work could not be self-performed since it was highly specialized.

Mr. Brown referred to previous discussions that were held regarding our engineers decoupling District contracts in order to provide additional subcontracting opportunities, and he questioned whether this transpired on the CSORC-EAP contract and, if so, what was the outcome. Mr. Brown commented that it was interesting that the District’s SBE

participation goal is 8.35% and the successful bidder proposed 8.75%, but this depends on “how much of the general work, themselves, they are led to do based on what is on the table at that particular point.” The contractor could have chosen to allow more of the general work to be completed by “someone who has some of the capabilities that they will not perform.”

Ms. Rotunno clarified that the District’s participation goal on the CSORC-EAP project was 8% and that Marous Brothers committed to 8.35%.

Ms. Rotunno stated that the District must award the contract to the lowest and best bidder, and with respect to self-performance, contractors need to balance meeting or exceeding District goals against being the lowest and best bidder. Work that is self-performed can be executed without a markup and without higher management costs. Higher costs are associated with projects components that are subcontracted. Each bidder’s proposal is different and the District conducts its due diligence. Ms. Rotunno indicated that she was personally involved in setting the goals on this particular project as well as other District construction projects. The cure-it-in-place liner is highly specialized and is a significant project component.

Executive Director Ciaccia suggested to the Board that during the next District project involving SBE goals the Board examine the process firsthand in order to increase their level of comfort. Interested Board members can contact Ms. Rotunno in order to observe the process and see how the goals are established. Executive Director Ciaccia believed that the District’s goal setting process is the best process and that we cannot use a one size fits all model. Mr. Brown appreciated Executive Director Ciaccia’s offer, but he indicated that the Board was not questioning the goal setting process. Mr. Brown stated that Ms. Rotunno’s explanation brought clarity on how the outcome occurred.

Authorization to Amend Agreement

Resolution No. 71-10

Amend the American Recovery and Reinvestment Act (ARRA) Agreement with the Ohio Environmental Protection Agency (OEPA) and the Ohio Water Development Authority (OWDA) for additional ARRA funding for the Cuyahoga Valley Interceptor Lift Station Improvements Contract CVI LS-3. A cost increase of \$1,586,267.00 in ARRA funding bringing the total contract amount funded by the ARRA to \$6,586,267.00, the total project cost.

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proceedings are documented. Those minutes will be provided to the Board for their review.

Mr. Brown advised that the Resolution No. 72-10 was to modify the contract to allow for a time extension and not the performance of the work. Mr. Brown indicated that the Board would like to examine the numbers at the time the contract was awarded against the outcome. Executive Director Ciaccia advised that staff will provide the Board with the MBE/WBE participation and performance to date on the ATR-3 contract.

Authorization of Easement

Resolution No. 74-10

Acquire from David N. Mathoslah one (1) permanent easement necessary for construction of the Euclid Creek Tunnel Project. Consideration: \$17,700.00.

MOTION – Mayor DePiero moved and Mayor Starr seconded to adopt Resolution No. 74-10. Without objection, the motion carried unanimously.

Authorization to Enter Into Settlement Agreement

Resolution No. 75-10

Settlement Agreement with James E. Walker III, Cuyahoga County Common Pleas Case Number CV-09-682408. Cost: \$34,000.00.

MOTION – Mr. O'Malley moved and Mayor DePiero seconded to adopt Resolution No. 75-10. Without objection, the motion carried unanimously.

VII. Information Items

There were no Information Items.

VIII. Open Session

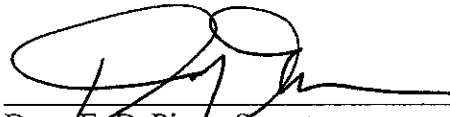
Mr. Brown welcomed Mayor Bacci to the Board and he appointed him to the Governance Committee, which is responsible for ensuring that the Bylaws of the Board, matters related to the Court order and rules of operation are relevant to the operation of the District. Mayor Bacci accepted the appointment.

IX. Public Session (any subject matter)

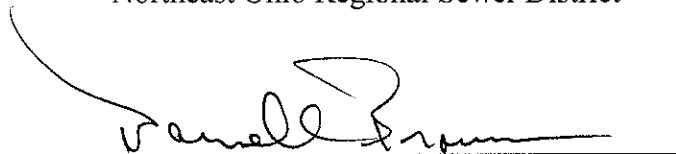
No members from the public registered to speak at Public Session.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Ms. Kelly seconded the motion to adjourn at 1:11 p.m. Without objection, the motion carried unanimously.



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



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