

MINUTES  
NORTHEAST OHIO REGIONAL SEWER DISTRICT  
BOARD OF TRUSTEES MEETING  
MARCH 3, 2011

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

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

II. Approval of Minutes

**MOTION** – Mayor DePiero moved and Mayor Starr seconded that the minutes of the February 17, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that Emanuele Diligente registered to speak at Public Session regarding a “sewer” topic which was a non-agenda related item. Mr. Brown advised that Mr. Diligente’s comments will be addressed during the appropriate Public Session for non-agenda related topics.

IV. Executive Director’s Report

Executive Director Ciaccia moved to the first report item regarding the flooding at the Southerly Wastewater Treatment Plant (hereinafter “WTTP”). After one foot of snowfall last Friday, a few inches of rainfall occurred Sunday night through Monday morning causing significant flooding and damage throughout this region. Executive Director Ciaccia turned discussion over to Director of Operations and Maintenance, David McNeeley, and Deputy Director of Engineering and Construction, James Bunsey, to

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present the Board with the Southerly flood situation and courses of action the District will be taking in response to this situation.

Mr. McNeeley advised that Southerly flooded on February 28, 2011 and he referred to an image which depicted the flooded tunnel areas in red and the flooded infrastructure in green. Mr. McNeeley advised that the flooded areas were contained. WWTP personnel did sandbagging in the tunnels in an effort to prevent the floodwaters from moving further into the WWTP.

Mr. McNeeley referred to an image and he explained that the floodwaters exited the screen building at approximately 3:00 a.m. and the District lost the ability to pass flow through this building. During the flooding, the WWTP was receiving flows in excess of 800 gallons per day. The floodwaters entered the process stream which helped reduce the areas affected by the WWTP. We were able to use process pumping to pump some of the floodwaters through the facility. However, the District did experience extensive damage in those tunnels.

Some of the responses that were taken included mobilizing crews to divert flows from the Southwest and Big Creek interceptors. Industrial dischargers were informed by Water Quality and Industrial Surveillance (hereinafter "WQIS") to cease discharging. Sewer System Maintenance and Operation (hereinafter "SSMO") personnel were dispatched to shutoff the automatic regulators and shut down pump stations and the Southerly collection system.

Mr. McNeeley advised that external agencies were notified of the situation. CEI was informed of the flooding problem at the main substation wherein we could have potentially lost that substation which would drop us out of that grid.

Mr. McNeeley referred to a photographic image and he advised that WWTP personnel attempted to gain access into the building. At one point, there was approximately three to four feet of water inside of the building and that water had to be removed in order to access some of the equipment.

The District notified the Ohio Environmental Protection Agency (hereinafter "OEPA") of the possibility of diverting flow from those interceptors. WQIS was instructed to obtain base line sampling of the actual waterways in an effort to determine the impact that diversion may have on those receiving streams.

At 11:15 a.m., WWTP personnel gained access into the screen building through a small bolted panel on the roof. After gaining access, the bar screens were started, which enabled the flow to go through that processing area.

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At 11:45 a.m., the WWTP flow was contained. This began the recovery mode.

At 12:00 p.m., the crews were informed to stop the diversion into the Big Creek and Southwest interceptors.

Mr. McNeeley showed the Board a series of recovery pictures. There was structural damage to the north side of the building.

At 12:30 p.m., industrial discharges were informed to begin discharging since the collection system was expected to return to normal operation. We notified all external agencies of the updated status.

Mr. McNeeley referred to an image depicting one of the flooded tunnels. The flooding in the tunnels ranged from 2-inches to 12-feet.

Mr. McNeeley referred to a photo of the main substation and he advised that at the lower portion of the fence line there was some debris remaining from the flood.

Mr. McNeeley advised that an assessment and recovery management team was formed on February 28<sup>th</sup> which included George Schur, Kevin Zebrowski, Greg Binder, Tom Vasel and Doug Gabriel.

Mr. McNeeley advised that all of the tunnels have been dewatered and we are in the process of assessing the damages. He then turned discussion over to Mr. Bunsey.

Mr. Bunsey stated that at 6:45 a.m. on February 28<sup>th</sup>, the Department of Engineering & Construction (hereinafter "E&C") was alerted to the flooding situation at Southerly. E&C immediately began prioritizing and devising its plan and identifying contracting mechanisms needed in order to get Southerly back on line. The District entered into an emergency contract with Executive Director Ciaccia's approval for under \$25,000 for emergency pumping. The District does not own the necessary equipment needed to dewater those tunnels.

E&C put into place a District assessment and recovery management team which formally met on Tuesday, March 1<sup>st</sup> to assess the damage at Southerly. The estimated potential damage included 80 pieces of equipment and 40 motors. Three motor control units were under water, which control the power to the equipment. The instrumentations, piping and steam piping in the tunnels were not accessible and there could be potential damage.

On March 2<sup>nd</sup>, the Operations and Maintenance (hereinafter "O&M") staff restored a few pieces of equipment and supplied laborers to begin cleaning the tunnels as the tunnels dewatered. Since they are not at the same elevation, some tunnels dewatered earlier than

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others. We also walked through the tunnels using battery-operated equipment and conducted an assessment of the damage.

Mr. Bunsey stated that Southerly was not able to process sludge and therefore we had to determine which pieces of equipment needed immediate repair. The drain pumps were the highest priority followed by the primary transfer pumps for the sludge from primary tanks 1 through 12, which work for basins 11 through 18. To a lesser degree, grit pumps 1 and 2 and channel aeration blowers 1 and 2 needed rehabilitation.

Mr. Bunsey advised that Southerly is built to have continuous operation and by not having the ability to transfer sludge from the primary tanks creates a tremendous bottleneck. Therefore, the ability to process the sludge is limited. Easterly also pumps its solids to Southerly for disposal and therefore Easterly now has a limitation resulting from the problems at Southerly.

Mr. Bunsey explained that solids will continue to build in the primary tank. Although the sludge collector is a robust piece of equipment, as the solids become deeper, this unit will not operate as effectively and could potentially become damaged if the solids become too deep. Furthermore, if the solids become too deep, Mr. Bunsey advised that this could cause potential carryover further into the WWTP.

Mr. Bunsey advised that in an effort to alleviate the situation, the District proposes entering into an equipment replacement emergency contract and a conventional construction emergency contract. The District has identified equipment that needs replacing and has begun the competitive bidding process based on the model numbers of those units. Those bids are being received.

With respect to the conventional construction emergency contract, the District has prepared a Request for Proposal (hereinafter "RFP") for installation of the equipment. Mr. Bunsey advised that scope of this project is limited to two-month duration for the 12-primary sludge dewatering pumps, 2-drain pumps and 3-aeration blowers.

Mr. Bunsey explained that the three general contractors will submit bids this afternoon at 3:00 p.m. Those general contractors were selected based on the District's knowledge of their ability to bring speed to market, bringing workers to the WWTP, entering into a contract and having equipment available as early as Friday morning. The lowest and best bidder will be selected and, in this instance, best means timeliness.

Mr. Bunsey advised that the District anticipates evaluating those bids this afternoon and that Executive Director Ciaccia will keep the Board apprised of any new developments. Resolutions for those emergency contracts will be presented to the Board for consideration at the March 17<sup>th</sup> Board meeting. The emergency contracts will only get

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Southerly operating in a safe mode. Additional equipment will need repair, but at this time were not considered as a priority. Those items will be placed under a long-term design, bid and build conventional contracting plan.

Mr. Brown inquired if most of the equipment damaged includes pumps, motors and electrical control panels wherein Mr. Bunsey affirmed.

Mr. Brown referred to the list of equipment needing repair or replacement. He questioned if these motors can be dried out and whether this is part of the District's repair and replacement strategy. Mr. Bunsey affirmed and he explained that we have 12-sludge pumps that need to be back in service quickly. Six motors have been ordered and we are hopeful that we may be able to get some existing motors running. While we install the 6-motors, the District will identify which motors are no longer operable. A re-manufacturer will repair the inoperable motors and return those to the District in a timely manner. Mr. Bunsey assured that the District is looking into ways of rehabilitating existing equipment.

Mr. Brown inquired whether the District had a cost estimate of the initial effort to get the system operating. Mr. Bunsey replied that it is difficult to determine a cost estimate at this time since we have not had the ability to examine the motor control centers within the tunnels. It would be less than \$50,000 for the motor equipment to be made operational. The onsite general contractor would cost around \$500,000.00.

Mr. Brown referred to the sludge disposal issue at Southerly and Easterly and he inquired as to how long the District can store sludge onsite and whether repairing the sludge equipment is a top priority issue. Mr. Bunsey advised that the sludge equipment is a top priority. Mr. McNeeley added that the timeliness of moving the solids through the facility is critical and that septicity could become an issue.

Mr. Brown requested further explanation of "septicity." Mr. McNeeley advised that we do not want to treat septic sludge and that it is ideal to treat sludge as quickly as possible. We do have the capability of storing sludge at Easterly. However, storing in primary sludge tanks becomes an issue since those tanks are not designed to move sludge once it gets too thick. As it sits and begins to build, then the system cannot move it which leads to other issues. We must move the sludge from the primary tanks, but those pumps and motors have been compromised by the flood. Mr. McNeeley stressed that the timeliness of getting this equipment operable is the most critical aspect of this recovery effort.

Mr. Brown inquired if one of the criteria is the contractor's ability to respond in a timely manner. Mr. Bunsey affirmed and explained that the only contractors able to be onsite Friday morning should respond to the RFP.

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Mr. Brown inquired about the District's exposure and ability to respond should other wet-weather events given the current state of the Southerly WWTP. Mr. McNeeley advised that the WWTP staff met at 8:00 a.m. this morning and will be meeting this afternoon to discuss the plan of action. We must get further into the tunnels in order to evaluate the equipment and determine what is operable. We attempted to pump out some of the primary tanks from the surface but this becomes problematic for the reason that we must have a location to pump the sludge to. One of the issues being examined is exactly how much stress can be placed on the existing equipment. We will utilize any operable equipment to move these solids, which compounds the solids situation at the WWTP.

Executive Director Ciaccia noted that additional rain is predicted over the next two days and that a plan of operation is being developed to address that event. However, we may need to divert some flow earlier than we would like to.

Ms. Kelly referred to discussion about the immediate recovery costs for equipment at \$50,000 and the onsite contractor's cost would be about \$500,000. She inquired if there was an estimated total recovery cost and timeline to make the repairs.

Mr. Bunsey clarified that the \$50,000 amount was solely for motors and that there may be a multitude of emergency contractors for smaller equipment such as circuit breakers. The construction contract for \$500,000 is for a two-month duration and that we are confident within the first seven days there will be improvement in the WWTP operation.

Ms. Kelly again questioned whether we have an estimate of total recovery costs. Mr. Bunsey explained that we do not at this time. We will have a better estimate of cost recovery after we gain access to the control centers and determine whether circuits were damaged by water. If those circuits were water damaged, then that will tremendously impact the recovery costs.

Ms. Kelly inquired whether we had a time estimate for the repairs. Mr. Bunsey recommended that the Board will receive another update report in two weeks since we will have a better chance estimating the total costs after gaining access to the control centers in the tunnels. Executive Director Ciaccia advised that staff will bring the emergency resolutions to the Board for consideration at the March 17<sup>th</sup> meeting, which will be a good opportunity to report those numbers to the Board.

Mr. Brown inquired if we are looking at a contract for time and materials. Mr. Bunsey affirmed and stated that the project will be overseen by our inspectors and construction staff in the field. We will do daily takeoffs with the contractors and District signing off on time and materials.

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Executive Director Ciaccia commented that this huge event certainly underscores the need for more watershed management throughout our region. He then turned discussion over to Director of Watershed Programs, Frank Greenland, to discuss the environmental impacts this event had on our region.

Mr. Greenland shared photographs with the Board of some of the flooded areas within this region. He advised that there were numerous locations across our service area and periphery areas that were impacted by significant flooding. A dam washed out in Gates Mills. Cuyahoga Valley, Cuyahoga River, Rocky River and every major stream valley experienced significant flooding during this event.

Mr. Greenland referred to a photograph depicting localized flooding of the Chevrolet Branch of Big Creek, which is a regional stream in Parma and Cleveland. Although some improvements have been made, more work is slated to be completed under the regional Stormwater Management Program (hereinafter "SMP").

Mr. Greenland referred to a photograph depicting debris that accumulated resulting from street runoff.

Mr. Greenland referred to photograph depicting a full Puritas detention basin, which normally has little to no flow. This detention basin would be regionally operated and controlled should the SMP be fully implemented.

Mr. Greenland referred to images of flooding on Milligan Avenue and he explained that there was much localized flooding along feeder creeks and streams.

Mr. Greenland referred to another image of flooding in the Big Creek area along the Chevrolet Branch.

Mr. Greenland referred to a photograph showing flooding that occurred in the parking lot of Sam's Club at Brook Park and Tiedeman roads, which is in the Big Creek basin. He advised that this area receives a lot of intercommunity flow.

Mr. Greenland referred to an image of Cuyahoga River in the Cuyahoga Valley National Park system. Fortunately, there were no structures in this location and therefore the flooding impact was minimized. Conversely, Mr. Greenland referred to an image of flooding in the Cuyahoga River at a location near Rockside Road in Independence, which is surrounded by many structures. This area has seen historic flooding over the years.

Mr. Greenland referred to an image of severe flooding at Canal Road and 71<sup>st</sup> Street near Bacci Park in Cuyahoga Heights.

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Mr. Greenland referred to an image of Mill Creek flooding at Warner Road near an eroding hillside. He advised that the District has been monitoring significant erosion at this hillside. This is a first-out project after implementation of the SMP. Mr. Greenland explained that these flooding events continue to gouge out hillsides and stream banks and at some point Warner Road will be threatened. The District plans examining this area after the flooding recedes to determine whether the flooding has exacerbated this area.

Mr. Greenland referred to an image of West Creek near the Cuyahoga River in Independence, which experienced significant flooding.

Mr. Greenland referred to an image of Abrams Creek flooding at Sheldon Road, which is located at the borders of Middleburg Heights and Brook Park. This area experienced past flooding and discussions were held with both communities during our SMP community outreach meetings. This is a proposed first-out project area under the SMP to address road elevation, culvert and stream meandering issues.

Mayor Starr inquired whether the District has ever seen flooding of this magnitude or proportion. Mr. Greenland replied that this region experienced significant flooding during Hurricane Katrina and also in 2006. Mr. Greenland explained that this wet-weather event was unique in that areas that normally do not flood experienced significant flooding. Watershed intends to reach out to the communities in an effort to identify which areas experienced flooding and whether there are new problem areas that need to be addressed under the SMP.

Mayor Starr commented that this was "a perfect storm of rainwater, melting snow and frozen ground." He referred to this event as "a storm of biblical proportion" and that there was not saturation since the ground was frozen. Mayor Starr commented that there is only so much we could do since our systems, interceptors and retention basins have a certain amount of capacity to handle flow.

Mayor Starr commented that we used to plan for hundred year storms and he inquired as to how this event will be classified. Mr. Greenland advised that this storm "cannot be put on the charts." There were two inches of rain over a certain period of time, which does not classify as a hundred year storm, but in addition there were six inches of slush and it would be difficult to determine how that would measure.

Mr. Greenland stated that although we will not be able to solve every problem during these huge storms, we can take measures to mitigate damage under the proposed SMP.

Mayor Starr inquired as to the how the District plans paying for the repairs at Southerly. Executive Director Ciaccia replied that funding sources include the Equipment Reserve and Insurance Reserve funds and our insurance company is also involved.



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Executive Director Ciaccia advised that each community will be responsible for their damages with their limited budgets. Although the SMP may not have totally prevented this flooding, had the SMP been implemented the District would have been able to bring forth some resources for the communities through dedicated funds.

Executive Director Ciaccia advised that last week he and Kyle Dreyfuss-Wells were deposed in the SMP matter and Frank Greenland will be deposed this week. The communities indicated that they have been doing a good job with stormwater management. Executive Director Ciaccia believed that they probably have, but it is not going to be enough. There are regional systems that have to be managed on a regional-basis.

Mr. Brown referred to the photographs showing flooding on various streets and he advised that in many instances the streams crest over the banks. Basement flooding occurs due to the sewers taking on the water from the streams and there really is nothing that we can do. Mr. Brown suggested that it would be beneficial if we map out the flooded areas in order to gain a better understanding of the historical and new street flooding related to estuaries and creeks throughout this region. We should also conduct outreach to our member communities in an effort to determine the flooding throughout this region.

Mr. Greenland agreed with Mr. Brown's suggestion and he advised that the District intends reaching out to the service directors and city engineers.

Ms. Kelly inquired whether customer service has received an increased volume of calls due to the basement flooding. Executive Director Ciaccia advised that we have not experienced an increased volume of calls in our customer service department and he speculated that the customers have been contacting their respective communities. As we get further into stormwater management, the customers will need to be educated on the responsibilities of the District and the member communities. Executive Director Ciaccia advised that the District anticipates receiving more customer service calls in the future as these types of events occur and that we are planning accordingly.

Mr. Brown added that many times residents do not call the municipalities when they experience basement flooding. However, we encourage the residents to call so we can identify which areas throughout the communities experienced flooding.

Executive Director Ciaccia moved to the next report item regarding the SMP litigation. On March 15, 2011, Judge Pokorny will conduct the hearing on the District's Motion for [Partial Summary Judgment] in the SMP matter.

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On March 24, 2011 and March 25, 2011, a settlement conference has been scheduled in the judge's chambers in the 3320 Woodland matter.

We are tentatively scheduled for mediation in the KMM&K matter during the week of April 11<sup>th</sup>.

Executive Director Ciaccia advised that the Auditor of State will brief certain staff members immediately following the Board meeting. Executive Director Ciaccia invited the Board members to attend and he advised that this is not a public meeting per the Auditor of State.

V. Action Items

Authorization to Advertise

Resolution No. 48-11

Copy paper for use at all District facilities.  
Anticipated value: \$27,405.00.

Resolution No. 49-11

Advertise for bids for the Southerly Wastewater Treatment Center Spiral Screw Pump Replacement Contract (SSPR-2). Engineer's opinion of probable construction cost: \$390,000.00.

**MOTION** – Mayor DePiero moved and Mr. O'Malley seconded to adopt Resolution Nos. 48-11 and 49-11. Without objection, the motion carried unanimously.

Authorization to Rebid

Resolution No. 50-11

Reject all bids and advertise for the rebid for construction of the Environmental Maintenance and Service Center (EMSC) HVAC Improvements. Engineer's opinion of probable construction cost: \$550,000.00.

**MOTION** – Mayor Starr moved and Ms. Kelly seconded to adopt Resolution No. 50-11. Without objection, the motion carried unanimously.

Authorization to Issue Request for Proposals (RFPs)

Resolution No. 51-11 RFPs for design and construction administration/resident engineering (CA/RE) services for the Dugway West Interceptor Relief Sewer (DWIRS).

**MOTION** – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution No. 51-11. Without objection, the motion carried unanimously.

Authorization to Issue Request for Qualifications (RFQs)

Resolution No. 52-11 RFQs for two appraisal and appraisal review two (2) year contracts. Cost not to exceed \$150,000.00.

Resolution No. 53-11 RFQs for two general right-of-way two (2) year contracts. Cost not to exceed \$300,000.00.

**MOTION** – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution Nos. 52-11 and 53-11. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 54-11 Direct purchase from sole source vendor Rexel Midland, PLC Hardware, software and repairs for all District facilities. Anticipated expenditure: \$120,000.00.

**MOTION** – Mr. Sulik moved and Mayor DePiero seconded to adopt Resolution No. 54-11. Without objection, the motion carried unanimously.

Authorization to Enter Into Contract

Resolution No. 55-11 Contract with LABLynx, Inc. for the annual maintenance and support of the laboratory and pretreatment information system. Cost: \$30,000.00.

**MOTION** – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution No. 55-11. Without objection, the motion carried unanimously.

Authorization to Amend Resolution

Resolution No. 56-11

Amend Resolution 364-10 revising the grant of easement to reflect new ownership. The Flats East Development LLC transferred its ownership of Cuyahoga County Permanent Parcel No. 101-01-005 to Flats East Surface Parking LLC and the City of Cleveland. The remainder of the Resolution will stay the same as the original. Consideration: \$1.00.

**MOTION** – Mr. Sulik moved and Mayor Starr seconded to adopt Resolution No. 56-11. Without objection, the motion carried unanimously.

Authorization of Easement

Resolution No. 57-11

Acquire from Northern Lakes Management Co. one (1) temporary construction easement located in the City of Cleveland (part of Permanent Parcel Nos. 112-06-003 and 12-006-005) necessary for construction of the Euclid Creek Tunnel Project. Consideration: \$330,185.00.

**MOTION** – Ms. Kelly moved and Mr. O'Malley seconded to adopt Resolution No. 57-11. Without objection, the motion carried unanimously.

Sewer Use Code Matter

Resolution No. 58-11

Adopting the findings of the Hearing Examiner with regard to the sewer account of Abel Metal Processing, Inc., Sewer District Case No. 11-002.

**MOTION** – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution No. 58-11. Without objection, the motion carried unanimously.

Add-On

Resolution No. 45-11

Adopting the Charter of the Northeast Ohio  
Regional Sewer District Board of Trustees  
Ad Hoc Committee on Ethics.

Mr. Brown advised that this matter will be postponed until the court's disposition.  
Resolution No. 45-11 was held.

VI. Information Items

1. MBE/WBE Draft Policy and Presentation

Executive Director Ciaccia advised that the disparity study was completed which supported the inclusion of race- and gender- based subcontracting goals in the District's Small Business Enterprise (hereinafter "SBE") program. Included in the Board members' packets was the draft MBE/WBE policy. Contract Compliance Manager, Tiffany Jordan, will make a presentation today and the Board will be asked to take action on the policy at its March 17<sup>th</sup> meeting. If adopted by the Board, the District plans implementing the revised program in June. Executive Director Ciaccia then turned discussion over to Ms. Jordan.

Ms. Jordan specially thanked Ms. Kelly, Craig White, Colette Holt, senior staff, the MBE/WBE subcommittee, the Office of Contract Compliance (hereinafter "OCC"), Mr. Bucci and the Law Department.

Ms. Jordan summarized the presentation to include the disparity study overview, program objectives, definition of MBE and WBE, eligibility standards, the economically disadvantaged portion of the program, communications, outreach and next steps.

The District conducted an extensive disparity study which examined evidence of discrimination for minority- and women-owned firms. The study found statistical and anecdotal evidence of discrimination within the District's marketplace.

The District's goal is to have two programs which will include MBE, WBE and SBE goals to begin June 1, 2011. Those goals will be set on a project-by-project basis.

Ms. Jordan defined MBE and WBE as a "local small business that is at least 51% owned by one or more minority or woman which is managed and controlled by one or more minority or woman individual that performs a commercially useful function."

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The definition of minority is broken down into groups including African-American, Hispanic, Asian and Native American. WBE shall mean a person of the female gender who is a business owner. A woman is defined under Ohio law.

Ms. Jordan moved discussion to the eligibility standards as recommended by the disparity study, which covers the metropolitan areas to include Cleveland, Elyria, Mentor, Akron, Canton, Massillon, Youngstown, Warren and Ashtabula.

Ms. Jordan referred to a map of the current SBE area which includes Cuyahoga, Lake, Geauga, Summit and Medina counties and part of Lorain County. Ms. Jordan advised that the disparity study found that the areas shown in green and pink should be included as well.

Ms. Jordan advised that the revenue eligibility size standards remained the same except that a company's gross sales will be based on a 5-year average instead of a 3-year average. According to Ms. Jordan, this will provide the companies with an opportunity to remain in the program and grow further in order to reach the capacity that we would be seeking for our projects.

Another new program component is the inclusion of a personal net worth statement for SBE, MBE and WBE firms. The individual net worth shall be less than \$1.3 million and the owner must possess power to direct and manage the daily policy decisions.

Ms. Jordan stated that when establishing MBE, WBE and SBE goals we will consider project cost estimating by construction category, the ability of certified MBE, WBE and SBE firms, the correlation of category cost estimate, capacity and numbers of certified firms and whether they are MBE, WBE or SBE firms. A range of potential MBE, WBE and SBE participation goals will be calculated and Ms. Jordan referred to a slide depicting an example of those calculations in a spreadsheet format.

Ms. Jordan explained that certain general items will be incorporated into each bid. The MBE, WBE or SBE calculation sheet will have a breakdown of the bid items including the cost and estimated quantity.

Ms. Jordan explained that communication going forward will be geared towards MBE, WBE and SBE firms as well as prime contractors. Per the disparity study recommendation, the District will establish an advisory committee comprised of seven business owners that will advise the District on program recommendations. The District also plans meeting with community leaders.

The District will continue its public outreach and hold certification workshops. The District plans partnering with the City of Cleveland, W. O. Walker and Kilbane

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Construction Management. The District will participate in the Cleveland Hopkins Airport Synergy outreach.

Ms. Jordan advised that members of the Greater Cleveland Partnership (hereinafter "GCP") were present at today's meeting and she introduced Andrew Jackson, Wyatt Brownley and Deborah Bridwell. Ms. Jordan stated that the GCP is a unique program. She had toured their facility last Thursday. The GCP has a planning and estimating room for minority contractors which informs them of all private and public projects within the region. The MBE firms can view the plans and specifications on each project and there is an estimator to assist with project bidding. The GCP also works closely with bonding prep courses. Additionally, the District intends working with the Women's Business Council and Hispanic Business Association.

Ms. Jordan summarized that the disparity study supports the inclusion of MBE and WBE subcontracting goals on District projects. The metropolitan statistical area will be included and she noted that the disparity study found that the District's contracting dollars were spent throughout our service area and Ashtabula. The revenue eligibilities will be based on a 5-year average. Personal net worth statements will be required and is a new program component. An advisory committee will be established. Outreach will continue.

Ms. Jordan concluded her presentation and stated that the next steps include Board approval of the MBE/WBE policy and moving forward with program implementation on June 1, 2011. The District will also continue its presentation services called the "Opportunity Pipeline."

Mayor DePiero thanked Ms. Jordan for her presentation and he commented that there have been "sham companies" established in order for people to participate in MBE/WBE programs. He questioned as to what type of safeguards are being put in place to ensure that this does not occur in the District's program. Ms. Jordan replied that the District verifies that 51% of each company is owned by a minority or woman by obtaining information through their tax filings and personal net worth statements.

Mr. Sulik posed that if an individual owns an engineering company that does less than \$10 million but has a net worth over \$1.3 million, then they would not be eligible for the MBE/WBE program. Ms. Jordan affirmed.

Mayor Starr inquired if the District conducts surprise onsite visits to these companies. Ms. Jordan affirmed. Mayor Starr inquired if those onsite visits are announced wherein Ms. Jordan replied that we conduct announced and unannounced onsite visits.

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Mayor Starr inquired about what has been discovered in the past during those visits. Ms. Jordan provided an example that a prime contractor wanted to utilize a company for a service it was not certified to do. The subcontractor agreed and we did not use that contractor on that particular bid.

Mayor Starr inquired whether all of the contractors will be monitored directly and indirectly wherein Ms. Jordan affirmed.

Ms. Kelly thanked Ms. Jordan, the OCC staff and Mr. White for his participation in crafting the MBE/WBE draft policy. It is the District's intent to have program that brings opportunity and equity to the community. Ms. Kelly requested that the Board review the draft policy carefully and consider supporting this document in an effort to bring greater opportunity to the community.

Mr. Brown thanked Ms. Jordan and staff as well as Ms. Kelly and Mr. White for being heavily involved in the process. This process has been ongoing for several years. The disparity study was very timely and took much effort and produced a good outcome. The challenge will be implementing the program. The District must ensure accountability and compliance with the established goals and hold our vendors responsible for articulating those goals.

Mr. Brown referred to the language in the draft policy which indicates setting annual program goals; not just on a project-by-project basis. He stated that it is important to identify the opportunities and remember how well compliance has worked. Mr. Brown suggested that sanctions be in place for contractors who fail to comply with the District's program.

Mr. Brown suggested that communication include informing the public that the District has conducted its due diligence and implemented a program that is inclusive and to encourage eligible contractors to participate in order to achieve economic prosperity for this region.

Mr. Brown corroborated Ms. Kelly's recommendation to support this policy and that he looks forward to future engagement from staff and the Board on this issue.

2. Bricker & Eckler Internal Review and Investigation for the Northeast Ohio Regional Sewer District.

Executive Director Ciaccia advised that the District chose to proceed with the investigation of construction projects in response to the former general counsel pleading guilty to criminal charges in 2010. Those charges related to embezzlement from the District and two bribery schemes involving parties in the Mill Creek Tunnel project.



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The District selected 20 past construction projects exceeding \$1 million and having substantial costs overruns. The District wanted to determine whether there was supporting evidence that the former general counsel and/or other contractors were involved in similar types of activities; whether other District employees may have been involved in such activities; and if the processes and culture of the District lead to any practices that might have compromised the District monetarily and/or structurally with the contracts. The District would like to move forward and restore confidence with its customers that we have done thorough research.

Executive Director Ciaccia referred to past discussions wherein it was suggested to conduct this investigation on a contingency basis. He indicated that he did not follow the logic of that approach and that it would not have resulted in the same outcome.

According to Executive Director Ciaccia, we have a good product and there is still more work to do. There is an ongoing civil lawsuit involving the MCT project. Executive Director Ciaccia was hopeful that we could concentrate on the present and the future.

Executive Director Ciaccia referred to the following proverb, "He who troubleth his own house shall inherit the wind and the foolish shall be servant to the wise of heart." He then stated that "this house has been and continues to be made up of highly qualified and dedicated individuals, at its foundation." We are ready to move forward and manage over \$200 million a year worth of construction projects. We need to focus our attention on the money that needs to be managed today. Executive Director Ciaccia advised that we will be aggressive and go after what we can from the past, but we are going to continue moving forward.

Executive Director Ciaccia turned discussion over to Richard Blake and Jack Rosati from Bricker & Eckler.

Mr. Blake thanked the Board and staff for the opportunity to assist the District in this matter.

Mr. Blake advised that the Board was provided with a copy of Bricker & Eckler's report last week. The investigation included the review of 20 contracts spanning over 13 years. More than 24 to 25 individuals were interviewed and 17,000 documents were reviewed which included change orders, contracts and all documents related to those projects. The review took several months to complete. The review team consisted of Mr. Rosati, Mr. Blake and engineers within their firm who are also attorneys.

Mr. Blake stated that based on their review of the 20 projects, "no criminality, outside of what we know in the media" was found or "could be proven or would require this Board

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or this management to go to law enforcement authorities.” They did find significant deficiencies while speaking with people still employed by the District and former officials as to the “culture” of this organization. The culture over multiple decades as described by the engineering group was “one of a significant distrust” of the Legal Department and former General Counsel in particular. The interviewees indicated that there was distrust and believed that there were “relationships” between the former General Counsel and other contractors. Although no evidence was found supporting illegal relationships, it permeated throughout the interviews. Mr. Blake noted that “there is a significant change in our determination in speaking with folks of that culture” and that this is discussed in their report.

Mr. Blake advised that the District had to examine the culture of the District. If a contractor bids a certain amount and then requested change orders and those orders were paid, then those numbers add up. Mr. Blake indicated that they examined details behind the change orders and found that there were some actions, which were discussed in the report, of the risk of an appearance of impropriety by individuals connected with the District. Mr. Blake stressed that no evidence was found supporting that “impropriety of any members of the Board or management or anyone else involved.”

Mr. Blake advised that 16 specific recommendations were identified and contained within the report. He then turned discussion over to Mr. Rosati.

Mr. Rosati advised that Bricker & Eckler examined the District’s prior processes for addressing changes, unforeseen conditions, contract management and administration during the period under review. They sorted through 250,000 pages of documents and took facts from the interviews. Those documents were then lined up with Ohio law with respect to changes as well as Bricker & Eckler’s experience in facilitating with wastewater districts when training their people. Bricker & Eckler provided recommendations that could be implemented based on the review of those 20 projects.

Mr. Rosati stated that their review of those 20 projects provided them with a better understanding of some of the issues that consistently arose. There is not much more to be gained by examining additional projects and therefore Mr. Rosati stated that we do not recommend looking at an additional 20 projects for the reason that the same types of issues would be expected and it would not be worth the District’s investment.

Mr. Rosati stated that many recommendations were either implemented or are in the process of being implemented by the current administration and Board. There was a need to develop a predictable objective and well-documented process for addressing contractor claims for additional compensation and time as well as a need to train individuals in those processes and periodically monitor their compliance.

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The first recommendation was to adopt those processes which are being developed and ensure that for every contract change there is a determination that the contractor is entitled to a change under the contract documents and that the amount of the change is an appropriate amount. This documentation should be maintained in the District files along with the analysis.

The second recommendation was to approve time and money for changes in the work in advance, when possible. Circumstances will arise on projects where this may not be possible and the work has to be completed on a time and materials basis, but that should be limited.

The third recommendation was for the District to promote input from its field personnel early in the design phase. Mr. Rosati advised that a number of change orders resulted from people in the plants or involved in the operations of the District not being brought into the process in the early design phase and identifying problems that needed to be addressed as part of the bidding documents for which pricing could have been obtained.

The fourth recommendation was that investigations regarding site conditions or the conditions of sanitary sewer lines be performed close to the bidding date. Mr. Rosati advised that some circumstances were discovered wherein the sewer lines were evaluated for debris removal as much as seven years prior to the bids going out and the conditions had changed dramatically as a result of said delay.

The fifth recommendation was that unit prices, which are set up between the District and contractor during the competitive bid process, be carefully considered and suited for a particular project. Mr. Rosati advised that during the 13 years period under review, the unit price for sewer clean out projects was based on linear feet, but the linear feet unit price was not suited to compensating for additional debris removal. Therefore, you need to consider whether you will add additional linear feet of sewer or whether there will be additional tonnage of the removal and unit price for the that additional tonnage of removal.

Mr. Rosati stated that it is important to maintain language that requires the bids be balanced and there were many instances wherein bidders loaded their bids in a particular category or provided an artificially high or low unit pricing, which allowed them to increase their profit on the project as a result of what actually transpired.

Mr. Rosati advised that the unit price should reflect the cost of any potential work. If there is possible additional work required and this is known at the time of the bid, Bricker & Eckler recommends having alternates to the bid. For example, if the quality of the equipment in place has not been determined or if additional equipment may need replacing; those things can be identified as an alternate at the time of the bid.

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Mr. Rosati advised that it is useful to apply prevailing wage rates and certified payroll reports when negotiating change orders. Bricker & Eckler found that some of the change orders using hourly rates being charged by the contractor were excessive and well beyond wage rates that would apply as a matter of law.

Mr. Rosati advised that this was a voluntary process and the District provided Bricker & Eckler with requested documents in a timely and organized matter; however, not all contractors provided those documents and either chose not to do so in some instances or took a long time getting those documents to Bricker & Eckler.

Mr. Rosati explained that sometimes there are documents that will assist in evaluating claims that may not be available and therefore the recommendation was made that the District require contractors to escrow their original bid documents for a project. If there is a claim that has a major difference or change in scope of the cost of work, the District can then go back and check the original bid documents and assumptions made in their bid against the ultimate costs that are documented and arrive at what the additional costs should be.

Mr. Rosati suggested that when substituting a different type of work for the originally anticipated work there be a deduct for the original scope of work that the contractor will not be performing. This occurred in some instances but not in all cases reviewed.

The geotechnical baseline report or soils testing could be improved based on the 13-years reviewed and Mr. Rosati was informed that steps have been taken regarding making those improvements. Two primary problems were found; the difference in time between the geotechnical baseline report at the time of the project and occasionally a geotechnical consultant who issued that report would include in the report assumptions as to the kind of equipment the contractor could use to perform the work. This provided the contractor with an opportunity to allege that their bid was based on the recommendations as to the means and methods for performing work. Mr. Rosati explained that it is better to provide the contractor with base information and let them take the risk of determining the type of equipment to be used to address the work when they submit their bid.

Mr. Rosati explained that it is important for the District to strengthen its contract provisions relating to the notice of claims. A significant problem, which is not unique to the District, is that contractors will come into the project near the end, when it is difficult to address problems that arise on the project, with a new and unexpected claim that relates to events that occurred months earlier for which a change order was negotiated and executed. It is very important to have strict requirements that the contractor give the District timely notice. This can be useful to the District in addressing the problem in a

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timely manner while minimizing the financial impact. Unless you have the notice of claims, you cannot take action.

Mr. Rosati advised that it is important to strengthen the contract provision providing the District access to contractor documentation and financial information relating to alleged additional work. Mr. Rosati stated that each contractor we have had litigation against maintains a computerized job cost report which categorizes their actual labor and materials expending on various aspects of the work. Having access by contract to this information gives you a basis to compare what they actually spent on the work to their original bid takeoff from the escrow and reach a fair and reasonable cost of that work.

The District should maintain a database of change orders, claims, disputes, design errors and omissions and work quality issues. This can be maintained by the District's legal counsel in an attorney/client privilege context or in any other mode that the District deems appropriate. This would allow the District to identify repeat problems, ways of addressing those problems and engage in a process of continuous improvement of the District's processes with anticipation that it will save money over time.

The inspection testing and observation results obtained by the design consultant or the contractors should be shared with the District personnel immediately and not periodically. This would ensure that the District personnel are always on top of what is happening on a particular project on a daily basis.

Mr. Rosati concluded by stating that the aforementioned suggestions are primary recommendations. He then thanked the Board and staff for allowing Bricker & Eckler the opportunity to assemble this report and that he was hopeful the information will be helpful going forward.

Discussion was then turned back over to Mr. Blake.

Mr. Blake explained that the final recommendation deals with the generality of how the District handles certain financial matters dealing with the risk of the appearance of impropriety. Bricker & Eckler found documentation showing that the former general counsel actively solicited donations and moneys for members of the Board. Although this is not an illegal act, it would be a question of an appearance of impropriety. Mr. Blake further explained that when the general counsel actively solicits contractors doing business with the District to raise money on behalf of those Board members who vote on whether to approve change orders for those very same contractors could give the appearance of impropriety since the District is dealing with ratepayers' dollars, which are public funds.

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Bricker & Eckler strongly recommended that the General Counsel or any employee of the District be prohibited from actively soliciting funds for any members of the Board or members who may be involved with the District in general. This includes employees running for elected office who may be in management positions in the future. The recommendation was made that this practice cease going forward and that Board members and senior staff be provided with training and updates on ongoing campaign finance rules.

Mr. Blake stated that one can have the best intentions but it only takes one action, for instance, distributing letters to Company A to donate to a Board member for his or her election. That contractor, or Company A, donates money and later a major contentious change order is approved. This does not mean the Board member did anything wrong, but it gives the appearance of impropriety especially in today's culture and in Cuyahoga County in particular. It would be wise to cease from this type of activity altogether.

Mayor Starr first commented that Bricker & Eckler "is an excellent firm" and does "great legal work." He then requested Bricker & Eckler's opinion on contributions solicited by staff from nonprofit corporations whether it be the NAACP dinners, or fundraisers for local colleges and universities in the state of Ohio. Mr. Blake replied that he would like to research this issue further, but generally as an across the board prohibition he would have to say no to those instances. Mr. Blake advised that prior to making a more thorough and complete response, he would need to examine each individual situation.

Mr. Blake explained that they were not suggesting that individuals employed by the District are prohibited from donating money. That is a freedom of speech issue. There is however the appearance of impropriety under the circumstances discussed in the documentation. But for the fact that the former General Counsel has pleaded guilty to federal bribery charges, this may not have been an issue. Mr. Blake stated, "I would now at this point say a definitive across the board no."

Mayor Starr inquired about the appropriated and approved amount of Bricker & Eckler's original project scope. Mr. Blake replied \$300,000.

Mayor Starr advised that the invoice he received was to study cost overruns, procedures, et cetera. The invoice provided to him from the District was in the amount of \$384,145.73, which was approximately \$84,000 over the original amount approved by this Board. Mayor Starr indicated that he was not aware of the District receiving notice of the overage, but it "appears to be in red ink and appears that you forgave the \$84,000." Mayor Starr requested further explanation on the project scope.

Mr. Rosati indicated that it is Bricker & Eckler's philosophy to "keep our commitments" and that the Board authorized \$300,000 for them to pursue and compile a thorough

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objective report. Bricker & Eckler has billed for and expects to be paid \$300,000. However, Mr. Rosati explained that they believed it was important for the District to see the work that was performed "in hours times the agreed rate which was \$385,000" and we do not expect to be paid the \$85,000.

Mayor Starr questioned what will be the final bill amount wherein Mr. Rosati replied the District has the final bill. Mayor Starr questioned, "\$300,000?" Mr. Rosati replied, "Yes, that's what the Board was willing to authorize. We made a decision to limit ourselves in terms of the time we spent by that figure because we wanted to give you a good work product."

Mayor Starr advised that there were written communications between Executive Director Ciaccia and himself on how to approach these substantial contract overages, cost overruns and the history of the culture at the District and that enormous progress has been made. Mayor Starr advised that the question is how to do it. Should we hire law firms or model after the federal government's Medicaid/Medicare Program and receive a percentage with forensic auditors as the group unit being employed seeking that money?

Mayor Starr inquired if the original contract was to review a period of time of ten years. Executive Director Ciaccia believed that the timeframe was from 1979 to 2007.

Mayor Starr inquired why Bricker & Eckler only reviewed contracts over 13 years if the timeframe was 31 years. Mr. Rosati explained that the Bricker & Eckler committed to the review of 20 projects of the Board's choice for \$300,000. The 20 projects selected by the Board and administration were over a 13-year period. Bricker & Eckler's pricing was based on the number of projects, not the number of years.

Mayor Starr commented that it was his understanding that the original intent was to review the contracts and possibly recover taxpayers' money. He questioned, "How much did you discover in terms of recovery of money?"

Mr. Rosati replied that "questionable expenditures" and "questionable approvals" were found and that "it was not our understanding that we were to identify a specific dollar amount that the Board could recover in litigation." Mr. Rosati advised that approximately \$10 million was found and questioned either based on a lack of documentation of appropriate entitlement to a change or a lack documentation supporting the payment amounts. The information provided during the investigation was purely voluntary and upon obtaining additional documents, their opinions could change.

Mayor Starr inquired if the \$10 million was new information that the federal government did not already publicly report on. Mr. Rosati stated that it was his understanding that the federal government's investigation was limited and that they have not communicated

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with Bricker & Eckler the extent of their investigations. Furthermore, the federal government's investigation of District contracts was related to the MCT-2 and MCT-3 projects, which were not part of Bricker & Eckler's report.

Mayor Starr inquired which former employees were interviewed. Mr. Blake advised that Charles Vasulka, Tom Lenhart, Michael Cheetham and Rod Dell'Andrea were interviewed.

Mayor Starr questioned, "How about the executive director?" Mr. Blake replied, "He did not make himself available."

Mayor Starr stated that he supported a lot of the positive changes made by Executive Director Ciaccia when he took over the District. He questioned as to how many people retired in the Engineering and Construction Department after the changeover. Executive Director Ciaccia advised that the entire upper level of management of Engineering retired including Charles Vasulka, Kirit Parikh and Harry Gunvalsen.

Mayor Starr commented that Bricker and Eckler is a good firm but it seems that they had their hands tied behind their backs. He inquired if Bricker & Eckler had subpoena power for records and tax returns and if they were allowed to compel people to speak. Mayor Starr read aloud from page 35 of the report which stated, "The contractor did not provide additional documents or meet to verify the alleged differing site conditions."

Mr. Blake advised that they had no legal authority or subpoena authority through the court since they were not in litigation. Bricker & Eckler did not have the grand jury authority since they are not the federal government. They relied on people cooperating and some people chose to speak whereas others did not. Bricker & Eckler had no authority to mandate that the people show up.

Mayor Starr inquired if Bricker & Eckler read the Calfee Halter & Griswold LLP (hereinafter "Calfee") report led by Peter Comodeca, which he described as "a good report" and "the map that we used to make a lot of our reforms." Mr. Blake replied that they did review the Calfee report.

Mayor Starr inquired if Bricker & Eckler found anything new in addition to the Calfee report. He commented that we spent money but did not recover any money, which he thought was one of the major purposes of this review. Mayor Starr advised that he voted "No" on the resolution which authorized the Bricker & Eckler review. Mayor Starr inquired as to what new procedures have stemmed from this review because Bricker & Eckler's recommendations "look like a duplicate of what we already spent."



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Mr. Rosati explained that Bricker & Eckler examined the details of those projects and identified a great deal of specific changes in the District's processes that can save money in the future. Those changes may have saved some of that \$10 million in questionable expenses had they been implemented at the time the projects were reviewed. Mr. Rosati stated that the Calfee report provided good recommendations, but Bricker & Eckler's recommendations were more specific and tied into actual historical events. He then referred to Executive Director Ciaccia.

Executive Director Ciaccia stated that the Calfee report was a good report; however, the Bricker & Eckler report was more specific. The District implemented a lot of the recommended processes and the performance audit to be conducted by the Auditor of State will verify that.

Executive Director Ciaccia explained that the main objectives of the Bricker & Eckler investigation were to determine whether Bill Schatz or any staff members were involved in illegal conduct with any other contractors and if there were any additional incidents that needed to be reported to the authorities.

With respect to Mayor Starr's concern on the recovery of money, Executive Director Ciaccia agreed that he and Mayor Starr have communicated on this issue, but that he did not see the logic in hiring a contingent firm. There were some "questionable costs" found and it would be more logical for a contingency firm to look into those matters at a reasonable cost at this point. Having a contingency firm involved prior to the Bricker & Eckler review seemed to be "putting a fishing line in the water without a hook." This approach may "look good to the public," but the District would be spending a lot of money and staff time feeding a contingent contractor.

Executive Director Ciaccia explained that is why this particular approach was recommended. Bricker & Eckler produced an excellent report, which is serving its purpose at the staff level and hopefully with the majority to the Board.

Mayor Starr referred to page 23 of the Bricker & Eckler report which indicated that the Cuyahoga Valley Interceptor Rehabilitation Contract 2 resulted in 62% cost overruns. According to Bricker & Eckler's report, there was no evidence supporting that "Mr. Schatz directly influenced the change order process on this project."

Mayor Starr questioned, "Did you interview him?" Mr. Rosati stated that they did not.

Mayor Starr questioned how a conclusion can be made if Mr. Schatz was not interviewed. Mr. Rosati stated that "we found no evidence" which is not be interpreted as "there is no evidence in the universe that this occurred." The opinion that no evidence was found was based on the interviews of personnel and the review of documents that were provided to

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Bricker & Eckler. Mr. Rosati stated that Bricker & Eckler does not have the ability to do wiretaps or record conversations. Mr. Rosati explained that anything is possible, but they did not find any evidence in the information that was made available to them.

Mayor Starr agreed that Bricker & Eckler had significant limitations and he questioned, "Did we get any bang for our buck?" Mayor Starr stated, "The intent was okay, don't duplicate what you already know, don't duplicate common sense business practices, which you reiterated in this report...and try to recover...did you find any link or any recoverable moneys?"

Mayor Starr referred to page 80 of the Bricker & Eckler report wherein it stated that "Mr. Vasulka's memo was not addressed in the Board's resolution and appears the issue was never brought to the Board's attention." He questioned if Bricker & Eckler discovered "a lot of instances where the Board was never notified that they should have been notified or had a right to know?" Mr. Rosati replied that if those instances were found, they were identified in writing in the report.

Mayor Starr questioned, "Did you find some or a lot?" Mr. Rosati replied that there were some instances where it appeared that disagreements as to the validity of a claim were not shared with the Board, at least in writing or based on the interview conducted.

Mayor Starr referred to change order #11 for the East 90<sup>th</sup> Street Relief Sewer Repair listed on page 82 of the report and he stated that "in your opinion it contains an example of double billing." He questioned whether that was new information.

According to Mr. Rosati, this opinion was based on Bricker & Eckler's understanding of the bidding documents and Ohio law. "This contractor was required to maintain a certain level of commercial general liability coverage" that was supposed to be maintained throughout the course of the project. Whenever there was a change to the work that would extend work, they were given a 9% credit for additional insurance premiums. Mr. Rosati explained that it appeared that the documents generated by the contractor indicated that their policy was set to expire prior to the originally anticipated completion date of the project and "they would have incurred the renewal premium in any event, or alternatively that they were compensated for any renewal premium as part of the change order that they received." Mr. Rosati stated that this does not mean that the contractor did not pay the premium rather it is a question of whether that premium should have been reimbursed by the District.

Mr. Brown inquired if Bricker & Eckler found any substantive information related to any wrongdoing, what would be their contract obligation to the District. Mr. Rosati stated that if Bricker & Eckler found any evidence that there was criminal wrongdoing, then they were instructed to include that information in the report and present it to the Board.

3. Program Management Status Report and Update – February 2011.

Due to time constraints, Mr. Brown deferred this matter to the March 17<sup>th</sup> meeting.

VII. Open Session

Mr. Sulik advised the Board that the Finance Committee held a budget review hearing on Tuesday, March 1, 2011 and will be making recommendation to the Board to adopt the 2011 budget at the March 17, 2011 meeting. Mr. Sulik stated that the department heads presented their budgets to the Committee and that they are qualified and did an excellent job. Mr. Sulik advised that Executive Director Ciaccia insisted that budgets be kept in line and there were no significant budget increases.

VIII. Public Session (any subject matter)

Mr. Diligente referred to “threats and a statement made by Mr. Stan Lojek” who, according to Mr. Diligente, is “a very close friend of Mayor Bacci.” The alleged threat made to Mr. Diligente was to “keep your mouth shut, you have a raw sewage on the rear of your property, Hillside Party Center, 4617 East 71<sup>st</sup>, Cuyahoga Heights, which is discharging into Mill Creek.”

Mr. Diligente advised that he has agreed to allow the EPA to test the sewer line and they will determine whether it is a threat, or not.

Mr. Diligente inquired as to why Mayor Bacci is allowed to serve on the Board while he is doing business with Stan Lojek who was involved and convicted in a sewer scandal. Mr. Diligente stated that “this is a conflict of interest” and that Mayor Bacci “should be dismissed from position.”

Mr. Diligente wanted to inform the taxpayers of the situation that transpired at his business on January 3, 2011. Mr. Diligente advised that he tape recorded the incident and will be providing it to the media. Mr. Diligente stated that once this report is made public, he would like for Mayor Bacci “to write a letter to all of you and tell you the results and address it to the party center.”

Mr. Diligente indicated that he is “sick and tired to find out whether it was true or not” and that he cannot sleep over “this charge of raw sewage in Mill Creek.” Mr. Diligente stated that he comes forward as a good citizen and taxpayer of Cuyahoga County and that he does not want this on his conscious.

Mr. Diligente stated that he believed Mayor Bacci knew about this mess for a long time since he has been a longtime friend of Stan Lojek.

Executive Director Ciaccia noted that the EPA advised that they have been attempting to schedule a dye test with Mr. Diligente at the Hillside Party Center through Mr. Diligente's attorney Marc Dann. Voicemail messages have been exchanged and according to Mr. Dann, Mr. Diligente is not comfortable with allowing access and therefore no meeting has been scheduled.

Mr. Diligente advised that he received a call from his attorney, Mr. Dann, and that he plans to contact the EPA today to schedule them to come out Friday or Monday. Mr. Diligente assured that he will accommodate the EPA so they can test the line.

Mr. Diligente invited Mayor Bacci to respond and requested that he write a letter regarding the allegations made against his property.

Executive Director Ciaccia suggested that Mr. Diligente present accurate information and he referred to his comments made that a meeting has been scheduled with the EPA, when in fact, it was not. Mr. Diligente indicated that he will call back the person in charge.

IX. Executive Session

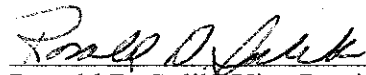
Mr. Brown stated that there was a matter for discussion in Executive Session.

**MOTION** – Mayor Bacci moved and Mr. Sulik seconded to enter into Executive Session to discuss legal matters related to *Gary Starr v. Northeast Ohio Regional Sewer District Board of Trustees, et al* and to specifically designate all matters discussed in Executive Session to be protected from public disclosure in accordance with Ohio Revised Code §121.22(g)(3) 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 2:18 p.m. to 2:59 p.m.

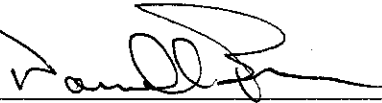
X. Adjournment

**MOTION** – Mayor DePiero moved and Mr. Sulik seconded the motion to adjourn at 3:00 p.m. Without objection, the motion carried unanimously.



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Ronald D. Sulik, Vice President  
Board of Trustees  
Northeast Ohio Regional Sewer District



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