

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
MARCH 6, 2008

Meeting of the Board of Trustees of the Northeast Ohio Regional Sewer District was called to order at 12:31 p.m. by Mr. Brown.

I. Roll Call

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

The Secretary informed the President a quorum was in attendance.

II. Approval of Minutes of February 21, 2008

MOTION – Mr. Liberatore moved and Ms. Kelly seconded that the Minutes of February 21, 2008, be approved. Without objection, the motion carried unanimously.

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

IV. Executive Director's Report

Executive Director Ciaccia began with a review of the performance plan that he had submitted on November 14, 2007 and which was included in the Board packet for the current meeting.

The first area for consideration of the Executive Director's One-Year Performance Goals Update was Capital Programs. The first order of business was to Develop a Ten-Year Capital Plan by May 1, 2008. This capital plan has been produced. It was briefly reviewed at the previous Board meeting during the budget hearing. The Executive Director stated that overall he considers it to be a good plan, acceptable if rudimentary, but that there is a lot more work that will have to be done in terms of firming up the plan with project estimating, cash flow projection, and the incorporation of the CSOs.

The Executive Director continued that the District's Long-Term Control Plan has begun to be implemented, but that it will be impacted by the course of the negotiations. A

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meeting is scheduled for March in order to attempt to further the negotiations. He stated that he foresees new goals originating from that of the Ten-Year Capital Plan upon its refinement.

The Executive Director's second point under Capital Programs was "Implement Calfee Audit Findings" which had a May 1, 2008 deadline. He informed the Board that the District is on track to meet that deadline. He stated that Deputy Executive Director Bucci has chaired a committee that is managing that process. Executive Director Ciaccia reminded the Board that Mr. Bucci had previously reported to the Board on the direction of the committee and will report again at the next Board meeting. The Executive Director added that there will be follow-up audits and that compliance will be tracked for verification of completion.

The third Capital Programs topic was "Develop a Scope of Work for Program Management." The RFP for a Program Management consultant was to be drafted by January 1, 2008; this deadline was met.

There has been considerable discussion as to the level of service that will be needed. This discussion is due to the fact that the District will be confronted with a very large capital program and will be absolutely committed to be on a certain schedule. The District must be in a position to be able to ensure that it meets its commitments to a consent decree. The Executive Director stated that the District has operated a very large capital program for many years without the strict deadlines that a CSO program would demand. Performance will become a major issue in the future.

The Executive Director continued that notwithstanding the CSO program, the District currently has a large capital program. Further, it is now time for the District to become totally acclimated in managing that particular program so that when the CSO program is implemented, the District will have all the resources it needs in order to be successful.

The Executive Director stated that there will be a full report to the Board regarding the RFP. He said that there is no question that an integrated approach will be proposed where the District staff will be integrated into the program staff of the management consultant that is ultimately selected. A review of such models has demonstrated them to have been successful.

The fourth Capital Programs topic covered by the Executive Director was "Development and Implementation of Plan for a Three-Year Asset Management Contract." Proposals have been received and evaluated. A recommendation will be made to the Board in April as to who will be recommended for this program. This deadline is on track to be met.

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The Executive Director stated that all these topics will ultimately further the development and management of the capital program.

The last issue expounded upon by Executive Director Ciaccia under Capital Programs was "Develop Change Order Standards." There was a January 31, 2008 deadline. Standards have been drafted. Discussion has centered on the issues of what is a change order, how should change orders be handled, what is the discipline to be used, and how allowances factor into project management. This will be brought to the Board because there are by-law ramifications that must be considered. Therefore, it is intended that the policy will be presented to the Board and to also consider by-law issues with relation to change orders.

Mayor Starr inquired as to what the Executive Director needed from the Board regarding change orders. Executive Director Ciaccia replied that based upon his understanding of the by-laws, every change order must come before the Board for approval. The Executive Director considers use of general allowances to be change orders. He also stated that there are many legitimate uses for general allowances. He asked rhetorically if it was contemplated that every single change order be brought before the Board. The Executive Director believes that issue must be visited in the context of the by-law revisions.

Mayor Starr continued that in the past in monitoring contracts, Engineering would report a percentage in simple terms. This was how overages were tracked. He asked if that will continue as a practice and in a more accurate manner by including general allowances as change orders. The Executive Director replied in the affirmative and added that from a reporting standpoint, as it relates to what percentage of a particular contract monetarily is attributable to change orders, that would include what is issued under a general allowance.

Mayor Starr emphasized the point that by keeping track of change orders, just for "information sake," the Board was not getting the true picture because allowances were not included. He voiced the conclusion that the reported change order percentage should have been a great deal higher, but that amount was never revealed to the Board.

The Executive Director stated that Mayor Starr's conclusion is essentially correct. He continued that he believes that it hinges on the definition of a change order, which, as previously opined, includes the use of general allowances. The previous definition did not consider the use of general allowances to be change orders.

Mr. Brown contributed that the clarification was appreciated, but that at the last Board meeting the Board acknowledged the fact that it did appreciate the due diligence of the

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Executive Director in more accurately accounting for and showing the Board, staff, and the public, the ability of the District to bring projects in on time and on budget if not under budget.

He acknowledged the need to understand not only the size of the program but its performance as well. He stated that the management of the engineering section is a critical part of the process and it is important to have someone that understands the charge and the responsibility. Mr. Brown added that he is a believer in not just accountability but in having a measurement tool to track the effectiveness of individuals who have high-level management responsibilities. Therefore, he believes that a method will be established to measure performance in a number of areas that relate to project delivery.

Mayor Longo referred to a statement made by the Executive Director regarding the establishment of a type of time frame or benchmark on projects that would enable the measurement of the completion of the various project phases. Mayor Longo stated that he believes this to be very important because in most government agencies such a benchmark does not exist. Mayor Longo referred specifically to ODOT and EPA which are not required to adhere to timeframes. He looks forward to the discussion concerning how this is dealt with and the measurement tool employed. He appreciates that this will be documented which allows for a concise way of following projects.

The Executive Director confirmed that this is the intent as the refinement of the capital planning continues. He raised the matter of a couple of issues driven by the consent decree: the need to meet deadlines and the critical matter of scheduling. He informed the Board that scheduling will become very important because the District is on an accrual accounting basis where cash flow becomes very important. Scheduling becomes important as to when debt will be issued so that the amount of debt to be issued is appropriate.

The next topic area introduced by the Executive Director from his One-Year Performance Goals Update was "Stormwater." The first point discussed was "Continue Efforts to Create a Stormwater Utility" as directed and supported by the Board. This is an ongoing effort. The consultant, AMEC, has been hired to assist in the development of all aspects of this charge.

The legal issues associated with the establishment of the stormwater utility continue to be explored. The Executive Director believes that there has been very good progress in identifying what must be done relative to the District's court order to demonstrate the District's ability to successfully implement this program.

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The second point under Stormwater was "Interact with Communities to Determine What Services the District Will Offer." Presentations have been made to 47 communities thus far. The reaction has been very encouraging. Presentations have been made to watershed groups and most recently to the Mayors and City Managers Association meeting the previous week. It is hoped that a resolution of support will come from that group which will bolster the District's case in court.

The last point to consider under Stormwater was "Present Board with Stormwater Rate Alternatives Based on Service Levels Focusing on Program Financial Feasibility." The Executive Director stated that he is on track to meet the winter deadline. He understands that it will be a key element of the strategy used to finally implement the stormwater program.

The Executive Director confirmed for Mayor Starr that the District requested a resolution from the Cuyahoga Mayors and City Managers.

Mayor Starr asked the Executive Director how the District will know whether or not the stormwater program will proceed based upon municipal support. The Executive Director responded that at this point he is very encouraged by the response. He stated that he feels fairly confident that there is the support to recommend to the Board that the program go forward. He did add that a very important piece, the question of the rate charged, is still unknown. He stated that presently there is support to the concept, but that may change when the matter of dollars is added to the equation. Executive Director Ciaccia said that by the time the program is presented to the Board in winter 2008, that the viability of moving forward to the next level of the program will be known.

Mayor Starr asked if it would be a good idea to require the individual political subdivisions to pass resolutions of support with specific language outlining the goals that the District is trying to accomplish as well as full disclosure on how the program will be paid for in terms of rate increases. Executive Director Ciaccia agreed that was a viable suggestion and will be considered.

The Executive Director added that at the Mayors and City Managers Association meeting, Mayor Akers of Pepper Pike suggested a collaborative approach to the program and forwarding it in a less than heavy-handed way, both of which the District is trying to do. Ultimately though, what is needed is one whole utility system – not a stormwater utility with a bunch of pock marks in it. The District will need to work with the mayors and city councils of each of the communities.

Mayor DePiero asked whether prior to approaching the communities again with the stormwater program will the District try to amend or include a stipulation in the court

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order concerning whether there must be unanimity among the communities for the stormwater program to proceed. He further explained his question by asking whether an amended court order would give the Board the right to move forward with the stormwater program even without the apparent approval of the communities.

Executive Director Ciaccia replied that it would be much easier to successfully establish a stormwater utility if there was the unilateral right to do so. He stated that it was unclear if that would be the case, and that it was certainly an important policy decision that the Board will have to consider with respect to amending the court order. The Ad Hoc Governance Committee will be addressing these very issues. He did agree that the issue of whether this will be a unilateral decision or based upon agreement is very significant.

The Executive Director agreed with Mayor DePiero that it was important to clear the hurdles in advance by firming the language of the court order and by getting a resolution in support from the Mayor and City Managers Association as a first step. Executive Director Ciaccia related a conversation he had with a city official that had already established its own stormwater utility, is collecting its stormwater fee, and is looking forward to when the utility can be transferred to the District. He added that it is important not to come down hard on the communities at this time, but to continue to convince them.

Mayor Longo raised the fact that if it was not for the U.S. EPA and phase two of the federal regulations, then this program would not be under consideration. He stated that as head of the Mayors and City Managers Association he can attest to the fact that unanimous support will not be given by its members. He continued that the District may have some tough decisions to make depending on the position in which the U.S. EPA maneuvers the District. If the U.S. EPA forces the program onto the District, then the U.S. EPA will do it to every community, too, if the District does not implement a program.

Mr. Brown added that it may be timely for the District to revisit what are the deliverables that are to come from the work of the consultant. The consultant is an entity that has the experience and will be looking at best practices. The consultant will need to identify the opportunities and the barriers in any mitigation strategy in order to create an implementation plan. Mr. Brown stated that it was an important and timely issue for the Board to understand the expectation in terms of the consultant's progress reporting, so that the Board will be knowledgeable about the entire process. Executive Director Ciaccia agreed to bring this to an upcoming Board meeting.

Mayor Longo inquired as to whether the Executive Director or any of his staff spoke with Chris Korleski, the Director of the Ohio EPA, at the Mayors and City Managers meeting. Frank Greenland, Director of Watershed Programs, reported that they spoke about

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stormwater so that Mr. Korleski would have an understanding of the District's goals related to improving the District's ability to deal with watershed issues. The conversation also dipped into the ongoing CSO issues and the current status of the negotiations with EPA Region 5. Mr. Korleski has taken an interest in all Ohio CSO negotiations because they all have been going on for up to six years. It is unclear if Mr. Korleski will become engaged in the negotiations. He did express concern over why the District would negotiate for six years about the schedule when it could have been moving ahead with the CSO program.

Mayor Longo reported that when he first met Mr. Korleski, Mr. Korleski had been unclear as to which side of the CSO dispute he would support. Mayor Longo believes that Mr. Korleski will be a player. Mr. Greenland added that they did discuss how the District would be submitting some information to the Department of Justice in Region 5 concerning increasing levels of CSO control and what that might mean in terms of overall program cost. Mr. Greenland intends to keep Mr. Korleski in the loop.

Executive Director Ciaccia continued with his Performance Goals Update. Under the topic of "External Communications" he discussed "Establish Proactive Government Affairs Function and Manager That Includes Interacting with Community Members and Office Holders." He informed the Board that this is connected with stormwater and the need to work with the communities. Darnella Robertson was appointed to the position. Ms. Robertson will be working with the communities and other governmental agencies from a governmental affairs standpoint. She is involved with the stormwater program. She is also becoming involved with the District's lobbyists and is trying to identify federal funding for the District.

Executive Director Ciaccia began discussing the fourth item of his Performance Goals Update: "Organizational Effectiveness." The first point under this topic is "Assess Needs and Develop Results Driven Organizational and Departmental Structures Aligned with Present and Future Programs, Initiatives and Realities." The Executive Director reminded the Board of the reorganization that has already been completed including the establishment of the Department of Watershed Programs and a reorganization in the administration area to establish Administration and External Affairs. The Executive Director also made known his goal of moving the District to a centralized purchasing and procurement function. He stated that the current system is fragmented and that there would be some benefits to a more centralized system. No formal deadline has been established for that goal.

The second point in this topic is "Continue Implementation of LSP Which Includes Areas of Knowledge Transfer Activities, Diversity Program, Basic Level Managerial Development Track and a Professional/Technical Track." This program was previously managed by consultants, but now will be handled in-house. The Executive Director

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reported that an employee development manager, Karen Gilliam Ph.D., has been hired to spearhead the program.

The final point in this topic is "Develop Management Performance Evaluation System." Executive Director Ciaccia reported that every director has submitted their performance evaluation plan, and Mr. Bucci is working with each of them. Dr. Gilliam will be part of this endeavor. There is a fall 2008 deadline to bring the program down to the next level within the District.

The fifth topic of the Performance Goals Update is "Disadvantaged Business Program." This contains the current MBE/WBE program which will be changing later this year. The first point within the topic is "Revive Current MBE/WBE Program Oversight and Management." Executive Director Ciaccia reported that there has been no monitoring or management of the existing MBE/WBE program. Other programs are being reviewed for consideration. The Board Ad Hoc Ethics Committee has been charged with this particular issue. One model has been presented to the committee, and additional models are being put together for submittal. There is a fall 2008 deadline to bring a successful model before the Board.

The next point within the topic is "Hire a Program Manager to Oversee and Monitor Compliance." The deadline was February 1, 2008 and has not yet been met. The Law Director has conducted interviews to add a lawyer to her staff who will be charged with structuring the program. A program manager will be hired to administer the program. Field personnel will also be hired to monitor the program.

The Executive Director stated that he felt that he had covered the last point within the topic "Determine Alternative Program Models That May Be Considered."

Mr. Brown interjected to summarize that the Executive Director was discussing the development and recommendation of an appropriate program for the District that will address minority-owned, female-owned or disadvantaged businesses with the goal of facilitating partnerships with local businesses on District projects. He continued that it is important for the District to move forward as an organization with an understanding of its past and present, what has been successful, and to define a strategy to move forward. He expressed disappointment as to the District's past performance with these businesses. He further stated that with the new program it will not be business as usual and that the contracting and consulting communities need to understand that.

Executive Director Ciaccia replied that based upon the records the consulting community has done pretty well in this area as far as adhering to their proposals. The records for the construction contracting community are not as conclusive. He stated that Constance

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Haqq, the Director of Administration and External Affairs, will be included in the program development with her area's Diversity Inclusion Committee in an attempt not to lose some of the ideals of the program in the process.

Mr. Brown stated that he feels it is vital that the District not wait for the federal government to bail the District out; the District needs to be in a self-help mode. It is important to spend the District's money locally as the region is struggling economically.

The Executive Director continued with the sixth topic of his Performance Goals Update, "Financial Objectives." The first point, "Exceed Debt Service Coverage Targets" which is one of our 'Report to the Board on a Quarterly Basis Initiatives,' has been met. The District's ratio for total debt, including bonds and SRF loans, is 1.33, with a goal of 1.05. The ratio for bonds alone is 6.16 with a goal of 1.25. He expressed that this will become an increasingly important metric as the District moves into the bond market which have strict debt service ratio requirements.

The second point is "Report to the Board Our Overall Rate Study Parameters for Revenue, Operations and Maintenance and Debt Service Quarterly." This will be reported quarterly although the Executive Director intends to include it within his monthly Executive Director's Report. The District is currently ahead by three million dollars considering revenues and expenses.

The last financial point is "Develop Budgetary Cost Containment Controls" which is an ongoing item. The Executive Director commended the Finance Department for doing a good job in this area, but that it is still under review.

The Executive Director's seventh topic is "Operations." The sole point here is "Maintain the excellent level of treatment in the plants and service to the customers." Executive Director Ciaccia stated that additional reporting metrics will be developed for this area.

The last topic is "Board Relations." The Executive Director kept his comments on this area brief. He stated that he believes that the District has tried to build its Board relations and that there is regular communication with the Board whether by phone, supplying information for committees and staffing the committees. Also, the establishment of a District-wide ethics policy would be addressed later within this meeting.

Mr. Brown thanked the Executive Director for the overview and the valuable insight as to the role the Executive Director plays at the District. Mr. Brown mentioned that he, Mr. Liberatore and Ms. Kelly were engaged in the budgetary process and found it to be very insightful in learning about the organization and the plan to carry out the mission of the District. The exercise spanned the operation of the three wastewater treatment plants to

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the District's legal challenges. Mr. Brown thanked the staff involved in the process for making it such a rewarding experience.

The Executive Director and Mr. Brown agreed that the Executive Director would report to the Board concerning his One-Year Performance Goals Update next in July 2008.

V. Consent Agenda

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

MOTION – Mr. Liberatore moved and Mayor DePiero seconded to adopt Resolution Nos. 71-08 through 73-08. Without objection, the motion carried unanimously.

VI. Action Items

Ad Hoc Ethics Committee Recommendations

Ms. Kelly introduced the first two action items, Resolution Nos. 52-08 and 53-08. Three documents had been provided to the members of the Board for review: the Code of Ethics, the Consolidated Disclosure Form, and the Code of Conduct and Decorum. At the last Board meeting it was requested that written comments be forwarded to Lawrence English, Assistant Director of Law, by February 29, 2008. No comments or recommendation for changes were received for the Code of Ethics or the Consolidated Disclosure Form; therefore, the Committee recommended that they be adopted by the Board as previously presented.

In reference to the Code of Conduct and Decorum a recommendation was received that Rule 5 be deleted. Upon meeting the Committee recommends the following change "The President shall serve as the primary spokesperson with respect to the media. However, the Board recognizes each member's right to communicate his or her views." Ms. Kelly stated that this change would clearly establish the President's role without infringing on any other individual's rights.

The committee is also proposing two additional changes. The first is the creation of Rule Number 11 under the heading of Confidentiality. It will read: "Board members will act in conformance with all applicable executive sessions and attorney/client privilege requirements and specific confidentiality resolutions including those made pursuant to the Ohio Revised Code Section 102.03(B)." The second is a change to Rule Number 7. It will read: "Board members should avoid the non-emergency use of cell phones, computers and personal digital assistants during the meetings in order to better focus on the business of the Northeast Ohio Regional Sewer District." The change in Rule

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Number 7 substitutes "should" avoid for "will" avoid. The Committee unanimously recommended adoption of all three documents.

Ms. Kelly thanked the staff for all its work for the Ethics Committee. The Committee feels that great strides are being made towards greater transparency and accountability at the District.

Mayor DePiero raised a question regarding Rule 10. He understands that the intent is to garner greater cooperation between Board members. His question concerns the definition of "inappropriate" in the statement "inappropriate methods of communication about District matters with non-District individuals and the media." He stated that an executive session issue binds the Board member to protect the District and not disclose anything. Ms. Kelly explained that any items that are discussed in executive session or deemed to be attorney/client privilege would be deemed confidential.

Mayor DePiero asked if that was covered in Rule 11 where the code section is cited, and whether, as a result, Rule 10 is necessary. Mayor Longo suggested an amendment at the end of Rule 10 stating that Board members will communicate in a cooperative manner with fellow Board members and District staff, and then deleting the remainder of Rule 10. He suggested leaving Rule 11 as the Code of Conduct with the confidentiality according to the Ohio Revised Code.

Mayor Starr asked for the purpose of the language that was left out. Ms. Kelly replied that it was to avoid any inappropriate method of communication. Ms. Kelly in response to Mayor Starr's query concerning what is inappropriate, answered that it was anything that would be inappropriate, argumentative, outbreaks in the meeting, anything that would be inappropriate.

Mr. Brown opined that he thought that Mayor Longo's recommendation was appropriate and that the Board should proceed.

Mayor Starr asked why the media was mentioned. Ms. Kelly responded that the Board President or his designated representative is, in the opinion of the Committee, the official spokesperson for the District. The Committee wanted to ensure that there is conformance with the executive session and attorney/client privilege requirements.

Mayor Starr asked Ms. Kelly about non-executive session matters. Ms. Kelly responded that it deals specifically with those items that would fall under confidentiality. Mayor Starr asked for clarification regarding the interrelationship of Rules 5, 10 and 11. Mr. Brown stated that Rule 5 concerns the definition of the role of President, and the others relate to other categories.

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Mayor DePiero explained his understanding that if it is an executive session matter then it is covered by attorney/client privilege and according to Ohio Revised Code it will not be disclosed. If it is not an executive session matter, it will be disclosed because it is public. Rule 5 states that anyone can speak about it. This was confirmed by Mr. Sulik and Ms. Kelly.

Mayor Starr asked for an explanation of the general purpose of adopting the Code of Conduct and Decorum, or, in other words, what was the motivating factor. He stated that he has no problem with the Code of Ethics and the Disclosure Form, but wants to know the purpose of the Code of Conduct. Ms. Kelly responded that it was for the Board members to act in the best interest of the Board, Customers and the District.

Mayor Starr went on to ask how the Code of Conduct and Decorum would be enforced. Ms. Kelly suggested that the document includes an enforcement provision. Mayor Starr asked Ms. Kelly to tell him how it would be enforced. Ms. Kelly again referred Mayor Starr to the document. Mr. Brown interjected that it is a recommended policy. Mayor Longo referred to it as a guideline. Mr. Brown added that the Code of Conduct has its own set of guidelines, or per Mayor Starr's reference, enforcement responsibility, that is set by the State, not by the Board. Mr. Brown stated that it is a set of guidelines for that conduct that would be expected from members of the Board.

Mayor Starr asked if the enforcement can be a censure action by the Board. Marlene Sundheimer, Director of Law, responded that the Code of Conduct and Decorum was essentially a guideline for how the Board members agree to conduct the business of the District among Board members, and that it was akin to the Golden Rule. Members are asking to be respectful of one another's opinions and to act appropriately. There is no legal enforcement of that rule, and there is no legal enforcement behind the Code of Conduct and Decorum except for those matters that involve confidentiality or attorney/client privilege as stated in Rule 11. However, there are ways that the Board members could enforce the Code of Conduct such as a vote of no confidence. Mayor Starr asked for greater clarity as to enforcement mechanisms such as censure or reprimand. Ms. Sundheimer responded that it would be up to the Board to make that determination.

Mayor Longo interjected with his opinion that the Code of Conduct is no different today than it would have been ten years ago or more.

Mayor Starr stated that he is in agreement that the implied powers of enforcement include reprimand or censure. He continued with a question pertaining to Rule 9 asking for an explanation. The Rule states that "The Board will discuss District business in an open forum, or in Executive Session, prior to public release." Ms. Kelly responded that items

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discussed in executive session are items of confidentiality, and any other business is discussed in open forum.

Mayor Starr asked whether any issue that is in the Board packet which is delivered a week in advance of the meeting should not be discussed with the public, the media, or taxpayers, until it is discussed at the public meeting. Ms. Kelly responded that would be appropriate for full understanding and participation of the Board members. Mayor Longo questioned the explanation. Ms. Kelly responded that the Rule states that Board members will discuss the business of the District in open forum, or in executive session, whichever is appropriate. Mayor Longo stated that "prior to public release" should be removed from Rule 9.

Mayor Starr asked for an explanation of specific confidentiality resolutions in Rule 11. Ms. Kelly responded that they are resolutions dealing with legal issues and issues of attorney/client privilege. Mayor Starr asked if the resolutions would be passed in executive session. Mr. Brown responded that resolutions cannot be passed in executive session only in the public forum. Ms. Sundheimer interjected in answer to Mayor Starr's question that was a reference to when one designates a particular item for discussion in executive session as confidential or to preserve attorney/client privilege and, further, that designation must be made in a specific motion prior to the motion to adjourn to an executive session.

Mr. Brown asked for a motion to vote on Resolutions 52-08 and 53-08. He then acknowledged Mayor Starr who had a question. Mayor Starr requested that the resolutions be voted on separately as they are two separate and distinct sets of rules and regulations and should be separated. Mr. Brown agreed, called for the motion and a roll call.

MOTION – Mr. Sulik moved and Mr. Liberatore seconded to adopt Resolution No. 52-08 as amended. The Secretary called the roll, and the motion carried with one "No" vote by Mayor Starr.

Prior to a roll call vote on Resolution 53-08, Mr. Brown opened the discussion for questions. Mayor Starr referred to Page 6 and the definition of confidential information. He stated that the definition is unclear as to what is confidential and what is overbroad. He questioned further regarding Number 1, "not a matter of public knowledge," whether the public has 100% knowledge of everything done at the District. Mr. Brown replied he would think not.

Mayor Starr continued with Number 2, "exempt from public inspection and copying by the Ohio Revised Code." He stated that if the reference is to the Ohio Revised Code,

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then it should state that; otherwise, it should reference what the exemption is referring to. Mayor Starr moved on to Number 3, "legally required to be kept confidential by the Northeast Ohio Regional Sewer District," and asked who decides what is legally required to be kept confidential. He asked if the legal department makes the determination and then tells the Board, or is it a matter of the law requiring the District to keep information confidential.

Mayor Starr's last point concerned attorney/client privilege. He stated that attorney/client privilege means the adversary cannot require a party to a lawsuit to testify as to a communication from an attorney. It does require a party to keep a communication from a lawyer confidential. Mayor Starr stated that this rule would put an additional restriction on the Board which is not now recognized by law. Mayor Starr's questions were referred to Larry English.

Mr. English responded that in terms of things not being a matter of public knowledge, there may be examples of items that would otherwise have been protectable, but if they are divulged, then they are made public record by someone else or some other means, no longer requiring the District to protect it.

Mayor Starr asked about the passage of Resolutions 71-08 through 73-08 and if the public would have any knowledge of them. He did not think so. Mr. English responded that items that have been made and passed as resolutions of the District are public records. He added that in terms of this definition, it is a collection of all three points. If something merely meets one of them, then it is not necessarily confidential. Mr. English gave an example of protected health information of an individual.

Mayor Starr asked if Mr. English was referring to an Ohio Revised Code section specifically in Number 2. Mr. English answered that there are exemptions that go beyond the Ohio Revised Code. There is a variety of other sources of confidentiality in addition to the specific items in the Ohio Revised Code.

Mayor Starr asked if it would be clearer to state under Number 2 that the reference is to both state and federal law exemptions. Mr. English responded that in considering Part 3, legally required, where there is an entity of any sort that has jurisdiction over the District that compels the District to keep something confidential. Mayor Starr disputed Mr. English's analysis. Mayor Starr stated that it refers to attorney/client privilege as Number 3 and that Number 2 would refer to exemptions of state and federal government.

Mr. English stated that he and Mayor Starr may be talking at cross purposes. He then read the section on Confidential Information and explained that the two sections are separate. There are things that are confidential as a matter of law. There is also

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confidential information that is attributed to anything that the Board has determined is attorney/client privilege, because whether something is privileged is a decision for the client to make. Here the client is the Board as a group. If the Board collectively determines something to be within the privilege and not to be disclosed, then the privilege does not belong to any individual member of the Board.

Mayor Starr moved on to a question concerning Page 9, Section 5.3, Standard of Conduct and Disclosure of Confidential Information. He asked who can designate information as confidential. Mr. English responded that there are things that the Board may wish to keep to itself and not to have disclosed unless it falls into a category that is recognized as protectable or confidential. Just because the Board may want to keep something secret, it cannot necessarily be kept secret. But if it is an appropriate matter, such as any of the things that would be in the statute regarding executive session materials, and the Board decides to keep those confidential, then it is closed. It does not belong to an individual Board member to disclose something contrary to Board decision.

Mayor Starr asked if notes kept by Board members in executive session are subject to public record. Mr. English said based on his understanding of case law, no; however, the materials discussed and reflected in the records may fall into the confidential protections here.

Mayor Starr asked who determines confidentiality and whether the administration may determine it. Mr. English answered that the legal department may research the matter, but that if there is a question of who is calling something confidential, then it may be appropriate to have another opinion, through a call to the Ohio Ethics Commission. The legal department could be a first resource.

Mayor Starr asked if a Board member would have to keep records of what has been designated confidential in order to be sure there were no violations of those provisions. Mr. English stated that it should be in the minutes, due to the fact that what is and what is not confidential is made explicit.

Mayor Starr then referred to Page 15, Section 7.1. He asked if a violation of 5.3 were referred to the county prosecutor, what law would the county prosecutor prosecute. Mr. English stated that he believed it was Ohio Revised Law Section 102. Further, it would be a decision for the county prosecutor. It is up to the prosecutor to make the determination to move forward or not.

Mayor Starr asked again as to the specific code section under which prosecution would occur. Mr. English responded that it was section 102, but he was unsure of the subsection. Ms. Sundheimer replied that it is 102.03(B) and that refers to the part of the

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Ohio Revised Code that designates certain matters as confidential and protected. It is an exemption from the Ohio Public Records Law.

Mayor Starr asked what is the authority of the Ohio Ethics Commission to enforce the Northeast Ohio Regional Sewer District's Code of Ethics. Mr. English responded that he does not believe that the Ethics Commission has any enforcement capability with respect to the District's Code. He stated that he does not think that the Ohio Ethics Commission would ever characterize themselves as enforcing the District's Code of Ethics; it would be their own ethics that they would be policing.

Mayor Starr then asked if anyone was aware of any illegitimate information that has been given to the media or to the public, if there was anything that should have been protected that was not. Mr. English stated that he was unable to answer that question. He added that the Board's Ethics Code is forward looking. The effective date of the Code shall be the date of adoption by the Board of Trustees. The Executive Director responded to Mayor Starr's question that he was unaware of any instances.

Mayor Longo asked Mr. English if there was anything presented in the document that is any different than how things have been done by any other agency or from what the District has done in the past. Mr. English agreed with the Mayor's characterization and added that the District cannot make something secret just by saying that it wants to.

Mayor DePiero asked if there is an enforcement mechanism, a penalty section, attached to the Ohio Revised Code Section 102.03(B). Mr. English responded that he believed it was Section 102.99 which designates it as a third-degree misdemeanor. Mayor DePiero continued by asking if there was a perceived violation; the Board would investigate and then either censure the individual or refer it to the prosecutor. Mr. English answered that whether that was the correct course of action will be circumstance-dependant, but it may be the determination by the majority of the Board to refer it. Only a prosecutor can prosecute a misdemeanor; it cannot be imposed by the Board.

MOTION – Mr. Sulik moved and Mr. Liberatore seconded to adopt Resolution No. 53-08. Without objection, and upon a roll call vote, the motion carried unanimously.

Requests to Bid

No discussion ensued on Resolution Nos. 74-08 through 76-08.

MOTION – Mayor Longo moved and Ms. Kelly seconded to adopt Resolution Nos. 74-08 through 76-08. Without objection, the motion carried unanimously.

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Requests to Award Bids

Mayor Starr questioned the engineer's estimate which was \$4.7 million and the bid came in at \$2.3 million which was 49% difference. The Executive Director replied that the engineer's estimate was based on faulty understandings and this was being addressed. Executive Director Ciaccia assured the Mayor that there will be tighter engineering estimates in the future. Mayor Starr asked if there were different companies bidding on the projects than had typically been seen in the past. The Executive Director was unable to confirm this observation as fact. He did observe that there is a lot of competition for the work at this time.

MOTION – Mr. Liberatore moved and Mr. Sulik seconded to adopt Resolution Nos. 77-08 and 78-08. Without objection, the motion carried unanimously. Resolution No. 79-08 carried with an abstention from Mayor DePiero.

Request for Progress Payment

No discussion ensued on Resolution No. 80-08.

MOTION – Ms. Kelly moved and Mayor Longo seconded to adopt Resolution No. 80-08. Without objection, the motion carried unanimously.

Professional Services

No discussion ensued on Resolution No. 81-08.

MOTION – Mayor Longo moved and Mr. Liberatore seconded to adopt Resolution No. 81-08. Without objection, the motion carried unanimously.

Request to Enter Into Agreement

No discussion ensued on Resolution No. 82-08.

MOTION – Ms. Kelly moved and Mr. Liberatore seconded to adopt Resolution No. 82-08. Without objection, the motion carried unanimously.

VII. Information Items (no items on agenda)

VIII. Open Session (no items on agenda)

IX. Public Session (no requests from the public)

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X. Executive Session

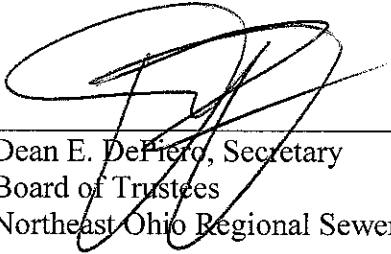
Mr. Brown indicated there were three matters for discussion at executive session including personnel matters.

MOTION – Mayor Longo moved and Mr. Liberatore seconded the motion to go into Executive Session. Without objection, the motion carried unanimously.

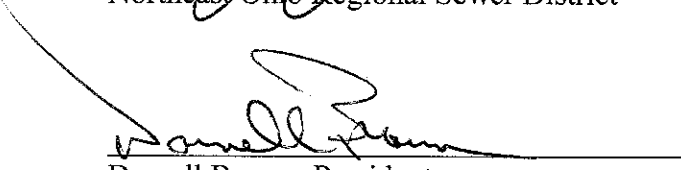
Board met in Executive Session from 2:08 p.m. until 2:30 p.m.

XI. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. Sulik moved and Ms. Kelly seconded the motion to adjourn at 2:32 p.m. Without objection, the motion carried unanimously.



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



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