

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
APRIL 7, 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 – Ms. Kelly moved and Mayor Bacci seconded that the minutes of the March 17, 2011 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

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

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item and he advised that the District is awaiting Judge Pokorny's decision on the District's Motion for [Partial Summary Judgment] in the Stormwater Management Program (hereinafter "SMP") matter and the District's authority under Ohio Revised Code (hereinafter "ORC") §6119.

Since the March 15th hearing, the Coalition of Ohio Regional Districts (hereinafter "CORD"), which is an organization representing ORC §6119 organizations throughout the State of Ohio, filed an amicus brief in support of the District's stance. CORD cites in

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their brief that there are three stormwater-only utilities created under ORC §6119. Executive Director Ciaccia advised that this was a significant show of support for the District.

County Executive, Ed Fitzgerald, sent correspondence to all parties involved in the SMP litigation inviting them to attend a meeting on April 14th. This invitation was subsequent to a discussion that Mr. Fitzgerald had with Executive Director Ciaccia, Director of Watershed Programs, Frank Greenland, and Manager of Environmental Programs, Kyle Dreyfuss-Wells wherein he advised that he plans holding a meeting in an attempt to seek some form of mediation. District representatives will attend Mr. Fitzgerald's meeting and according to Executive Director Ciaccia reaching some sort of resolution would be in the best interest of everyone. The District remains confident in its case especially in light of the amicus brief filed by the CORD.

Executive Director Ciaccia advised that it is difficult to determine how many people will actually attend Mr. Fitzgerald's meeting. Involved parties include 60 communities, their attorneys as well as the District. Executive Director Ciaccia indicated that he does not know what to expect or what the ground rules may be at this point.

Mr. Fitzgerald mentioned during his State of the County address on April 6th his intent to convene this meeting. Executive Director Ciaccia indicated that he looks forward to attending said meeting and seeing what can be accomplished, if anything.

Mayor DePiero stated that we would all welcome reaching some resolution and that he was hopeful the mediation would be structured "instead of 60 people sitting in a room looking at each other." Mayor DePiero questioned as to who would be running the meeting and whether there was an agenda. Is the goal for this meeting to simply just encourage mediation? If that is the case, Mayor DePiero indicated that Mayor Bacci, Mayor Starr and he have already offered a similar invitation five or six months ago, but were turned down for the reason that legal counsel for some of the member communities advised them not to meet. Mayor DePiero indicated that he was open to Mr. Fitzgerald's meeting, but that he did not want it to be a waste of everyone's time.

Executive Director Ciaccia replied that the landscape is changing and legal costs are mounting for the District and member communities as we get closer to the trial date in July.

Mr. Fitzgerald indicated that he would contact Executive Director Ciaccia before the meeting and hopefully more information will be given at that time. Executive Director Ciaccia advised that he will keep the Board apprised of any new developments.

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Executive Director Ciaccia advised that during Mr. Fitzgerald's State of the County address he indicated that we might come away with a timeline and an agenda. Executive Director Ciaccia does not anticipate reaching a mediated settlement after one meeting, but that it may get the ball rolling in the right direction. Executive Director Ciaccia indicated that he remains hopeful.

Executive Director Ciaccia moved to the next report item regarding the District's proposed rate increases. A Finance Committee meeting was held prior to today's Board meeting to discuss the proposed rate increases and operations and maintenance. The District held its first public meeting on April 6th at the Maple Heights Library. There were 24 attendees and many good questions were posed. Deputy Executive Director, F. Michael Bucci, and Finance Director, Jennifer Demmerle, fielded most of those questions. Executive Director Ciaccia felt that it was a positive initial meeting. The District will hold a public meeting in Beachwood next Monday and there will be subsequent meetings including one in Middleburg Heights.

Executive Director Ciaccia moved to the next report item wherein he advised that an Executive Session will be held during today's Board meeting to discuss mediations in the 3320 Woodland matter and the KMM&K lawsuit involving the Mill Creek Tunnel (hereinafter "MCT").

Executive Director Ciaccia announced that former Cuyahoga County Engineer, Robert Klaiber, was present at today's meeting. Mr. Klaiber is now working with CT Consultants. Executive Director Ciaccia congratulated Mr. Klaiber on his new employment and he advised that he enjoyed working with Mr. Klaiber during his tenure as County Engineer. Executive Director Ciaccia stated that he has never met "a more honest and hardworking individual" and that "we are glad he is on the private sector side and will hopefully be doing work for us in that venue."

V. Action Items

Authorization to Advertise

Resolution No. 79-11

Easterly Wastewater Treatment Plant
Aeration Blowers Rehabilitation project.
Engineer's opinion of probable
construction cost: \$4,027,000.00.

MOTION – Mayor DePiero moved and Mr. Sulik seconded to adopt Resolution No. 79-11. Without objection, the motion carried unanimously.

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Authorization to Issue Request for Proposals (RFPs)

Resolution No. 80-11

RFPs for the Euclid Creek Pump Station project.

MOTION – Mr. O’Malley moved and Ms. Kelly seconded to adopt Resolution No. 80-11. Without objection, the motion carried unanimously.

Authorization to Purchase

Resolution No. 81-11

Direct Purchase from sole source vendor Moyno Industrial Products, Moyno Pump parts for all Wastewater Treatment Plants. Cost not-to-exceed \$100,000.00.

Resolution No. 82-11

Purchase from Dell Marketing L.P., through the State of Ohio Cooperative Purchasing Program, PC desktops, laptops and related hardware as part of the annual computer hardware purchase. Cost: \$165,058.15.

MOTION – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution Nos. 81-11 and 82-11. After discussion and without objection, the motion carried unanimously.

Mayor DePiero inquired if the iPads for the Board were included in Resolution No. 82-11. Director of Information Technology, Humberto Sanchez, replied that they were not. Resolution No. 82-11 is for desktops and workstations for employees.

Mayor DePiero questioned about the status of the iPads. Mr. Sanchez advised the Board that Director of Engineering and Construction, Kellie Rotunno, was using a Netbook which is also being considered from a cost savings standpoint and is almost half the price of the previous pilot. Additionally, there is another smaller version of the tablet from our provider at a significant discount. The District is considering the various options available.

Mr. Brown commented that the Board should be in the position to test some of those products so that they can provide some input. Electronic Board packages and Board books will significantly reduce the amount of paper the District uses. Mr. Brown stated that the Board is interested in the most cost efficient product. He expressed that he did not want this initiative to be “a ship lost at sea.”

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Mr. Sanchez advised that the evaluation process will include the Board receiving pilots and providing their feedback of the various products.

Authorization to Enter into Contract

- Resolution No. 83-11 Two (2) year requirement contract with Bostwick-Braun and All American Poly for the janitorial product class used at all District facilities. Cost not-to-exceed \$96,496.22 for Bostwick-Braun and not-to-exceed \$15,916.48 for All American Poly.
- Resolution No. 84-11 Contract with media and sponsorship partners as part of the public outreach campaign. Cost: \$170,000.00.
- Resolution No. 85-11 Contract with Ozanne Construction Company, Inc. for professional construction management services for the Nine Mile Construction Management Core Services project. Contract fee: \$3,631,686.00.
- Resolution No. 86-11 Contract with Shook, Inc., Northern Division, for the Easterly Wastewater Treatment Plant Final Clarifier Rehabilitation Contract FCR-6. Contract fee: \$1,183,340.00.
- Resolution No. 87-11 Contract with Gartner, Inc. for one (1) year subscription to Information Technology Research & Advisory Services. Cost: \$65,054.00.
- Resolution No. 88-11 Contract with Oracle America, Inc. for Oracle Work Order Management System Custom Code to support Asset Management program. Cost not-to-exceed \$55,468.00.

MOTION – Mr. Sulik moved and Mr. O'Malley seconded to adopt Resolution Nos. 83-11 through 88-11. Without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 89-11 Modify Contract No. 10002260 with Kenmore Construction Company for the Westerly Wastewater Treatment Center 700 Building Improvements project. Cost: A time extension of 56 days with no change in the contract price.

MOTION – Ms. Kelly moved and Mayor Starr seconded to adopt Resolution No. 89-11. Without objection, the motion carried unanimously.

Sewer Use Code Matters

Resolution No. 90-11 Authorization to enter into settlement agreement with Julius Kovacs pursuant to Northeast Ohio Regional Sewer District Administrative Hearing Case No. 11-003.

Resolution No. 91-11 Authorization to designate Jennifer Demmerle as substitute hearing officer for appeal of administrative determinations.

MOTION – Mr. O'Malley moved and Mayor Bacci seconded to adopt Resolution Nos. 90-11 and 91-11. Without objection, the motion carried unanimously.

Authorization to Implement Grants Program

Resolution No. 92-11 Authorization to implement Small Scale Stormwater Demonstration Grants program. Cost not-to-exceed \$50,000.00 for 2011.

MOTION – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution No. 92-11. Without objection, the motion carried unanimously.

VI. Information Items

1. Industrial Pretreatment Program Legal Notice.

Scott Broski of WQIS advised that the Pretreatment Legal Notice is required by the District's NPDES permits. It lists industries that were in not in compliance during the previous year. The list was compiled following the EPA's guidelines and this

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information will be published May 1st. Mr. Broski advised that this information is typically presented to the Board prior to being published.

2. Proposed Amendments to Titles I and II of the *Code of Regulations*.

Mr. Broski advised that the District will send letters to the mayors, trustees, law directors and engineers of the member communities regarding proposed changes to local limits and how industrial users are regulated regarding parameters for iron, benzene, toluene, ethyl benzene and zylene. Those changes will provide better control on how the District regulates industrial users. After the member communities are notified, the District will make recommendation to the Board to adopt those changes in early May.

Mayor Starr inquired if these are mainly manufacturing companies. Mr. Broski replied that the industrial facilities are mainly manufacturing facilities and that the majority are involved with the electroplating industry.

Mayor Starr inquired whether this will be a cost item to the businesses. Mr. Broski advised that the regulation changes will probably not affect most businesses. Iron will be removed from that limit making the requirements less stringent. The benzene and ethyl benzene parameters will better regulate industrial site cleanups such as at gas stations where there is a leak in an underground storage tank. It will provide the District with better control on how the consultants clean up those sites and what can and cannot be put into the sewer system.

Mr. Brown referred to Information Item No. 1 and he questioned if there were any "repeat offenders" on the list and whether there were any ramifications for those businesses. Mr. Brown questioned if there were affects on the sewer systems and whether the District should notify the respective jurisdictions.

Mr. Broski advised that there were a number of repeat offenders from the previous year. The list is down from last year. The nature of the violations varies from barely exceeding the limit to substantially exceeding the limit. For each individual industry, the District follows an enforcement response plan. Aggressive action is taken against chronic violators and industries potentially dumping hazardous waste into the sewer system. Mr. Broski noted that the District did not have to terminate service or bring in any industries for a show cause hearing this past year. The violations were not as egregious as in the past. Mr. Broski advised that the District will work with repeat offenders. Those industries are placed on compliance schedules and the District has already inspected most of those industries in 2011. A greater majority of those industries are back in compliance.

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In response to Mr. Brown's concern about toxic chemicals and potential risk to local collection systems, Mr. Broski stated that District is lowering the limits to follow the EPA's guidelines to protect the collection system from explosion hazards and to protect the workers that operate and maintain the collection system. Mr. Broski believed these changes to be more restrictive for those needing to discharge materials as well as provides protection for our workers and assets.

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

Ms. Rotunno advised that the District held its kick off meeting for the Euclid Creek Tunnel (hereinafter "ECT") project this week. The contractors mobilized and are clearing trees and preparing to commence work on the ECT project. Ms. Rotunno advised that the Board members have been invited to the ECT groundbreaking ceremony on April 20th.

Ms. Rotunno moved to the project delivery Key Performance Indicator (hereinafter "KPI") and she advised that the District is on target to deliver the Capital Improvement Program (hereinafter "CIP"). The District has delivered two projects to date and is projecting to deliver a total of 34 projects in 2011. The District is gearing up for a number of accumulative awards in April and May.

Ms. Rotunno moved to the KPI for the engineer's estimate of probable construction cost and she advised that the two projects awarded this year fell within the average KPI range and were below the engineer's estimate by approximately 13%.

Ms. Rotunno advised that the District closed out the Miles Avenue Relief Sewer (hereinafter "MARS") project at 103% of the base contract amount, which met our KPI. Less than half of the general allowance was used on the MARS project.

Ms. Rotunno referred to a graphic depicting the year-to-date projects that are closed out within their base contract amount and general allowance. There is approximately \$30 million in general allowances and only \$2.62 million has been authorized.

Ms. Rotunno referred to a graphic and she advised that the left bar shows the projects at the time of bid. The green bar represents the base bid amount. The dark blue bar represents the general allowance amount. The yellow bar represents the specific allowance amounts at the time of bid in aggregate for all construction projects. The bar on the right indicates how those projects closed out or were delivered. Ms. Rotunno pointed out that dramatic reductions were made in the general and specific allowances, which indicates that those amounts are not being used unless necessary and relevant to the construction. There were also reductions in the base scope amount due to non-

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performing some bid items. There was a total savings of about \$5.1 million in bid money that has not been spent on those projects.

Ms. Rotunno moved to the KPI for MBE, WBE and SBE participation and she indicated that the District proposes 80% of its projects meet the MBE, WBE and SBE goals. The MARS project exceeded both the District's goal and contractor's MBE/WBE goals. This project was bid under the former MBE/WBE program.

Ms. Rotunno concluded her presentation by referring to a quote made by President Abraham Lincoln, "Always bear in mind that your own resolution to success is more important than any other one thing."

VII. Open Session

Mayor DePiero advised that in his capacity as mayor as new council members and staff members came on board they would hold Ohio Sunshine Law updates, which has been very beneficial in making sure that as new rulings are made they are acting in compliance with the Ohio public records law. Mayor DePiero was unsure whether the District has held Ohio Sunshine Law updates and he suggested that it may be a good idea going forward to hold a seminar or have the Board briefly updated prior to Board sessions.

Executive Director Ciaccia stated that Mayor DePiero presented a good idea and that it would be appropriate to receive an update or obtain an opinion from the Ohio Attorney General as to what is appropriate and what is not appropriate.

Mayor Starr indicated that he wanted to correct the record. In November, when the District was holding various public forums regarding the consent order Mayor Starr attended one of the sessions and responded to questions. Mayor Starr advised that Mr. Sulik was also present at one of those forums representing the District. Mayor Starr indicated that he omitted this and wanted to correct the record.

VIII. Public Session (any subject matter)

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

IX. Executive Session

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

MOTION – Mayor Bacci moved and Mr. Sulik seconded to enter into Executive Session to discuss the upcoming mediation of the KMM&K litigation in reference to the MCT-3 project, settlement authority and litigation strategy for the *3320 Woodland Avenue*

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Limited litigation in reference to the MCI collapse and the resolution of the *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 1:00 p.m. to 2:11 p.m.

X. Approval of Item from Executive Session

Resolution No. 93-11

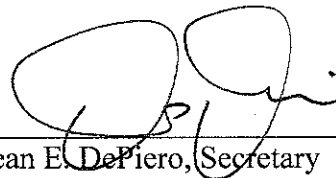
Authorizing partial settlement of *Northeast Ohio Regional Sewer District v. 3320 Woodland Avenue, Ltd., et al.*, consolidated cases 07-CV-643897 and 08-CV-650695.

MOTION – Mr. Sulik moved and Mayor DePiero seconded to adopt Resolution No. 93-11. Without objection, the motion carried unanimously.

XI. Adjournment

Mr. Sulik announced that the Ad Hoc Committee on Ethics will meet immediately following the Board meeting.

MOTION – Mr. Brown stated business having been concluded he would entertain a motion to adjourn. Mr. Sulik moved and Mr. O'Malley seconded the motion to adjourn at 2:12 p.m. Without objection, the motion carried unanimously.



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



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