

MINUTES
NORTHEAST OHIO REGIONAL SEWER DISTRICT
BOARD OF TRUSTEES MEETING
April 19, 2012

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

I. Roll Call

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

ABSENT: G. Starr

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

II. Approval of Minutes

MOTION – Mr. Sulik moved and Mayor Bacci seconded that the minutes of the April 5, 2012 Board meeting be approved. Without objection, the motion carried unanimously.

III. Public Session

Executive Director Ciaccia informed the Board that one member from the public registered to speak during Public Session on a non-agenda related topic. Mr. Brown advised that Mr. Edwards will address his comments to the Board during the appropriate Public Session.

IV. Executive Director's Report

Executive Director Ciaccia moved to the first report item regarding the KMM&K litigation matter involving the Mill Creek Tunnel 3 (MCT-3) project and he advised the Board that the final stages of gathering settlement documents are underway. An agreement in principle was documented in a memorandum of understanding, which is being compiled into a formal agreement. Executive Director Ciaccia advised that the

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 2 of 12

other parties promised to provide final documents in the next few days. The District anticipates closure of this litigation matter.

Executive Director Ciaccia moved to the next report item regarding the 3320 Woodland litigation matter which is set for trial in July. The District executed settlement agreements with two of the parties involved in this matter. The settlement agreement executed by Fabrizi Construction Company contains a \$2 million payment to the District. Wade Trim, a minor party in the lawsuit, executed a settlement agreement with the District as well. The remaining litigants include the property owners and Nerone & Sons, Inc.

Executive Director Ciaccia moved to the next report item regarding the Stormwater Management Program (hereinafter "SMP") litigation matter. Executive Director Ciaccia explained that Judge Pokorny ruled in the District's favor with respect to the District's authority to implement a SMP as well as impose a fee on the customers for stormwater management. Judge Pokorny ruled that the SMP fee is not a tax.

Executive Director Ciaccia advised that the communities in opposition to the SMP and business interests represented by Attorney Sheldon Berns as well as Summit County filed an appeal with the Court of Appeals of Ohio, Eighth Appellate District in which this matter was denied by the Court of Appeals and referred back to Judge Pokorny. Subsequently, those parties filed a Motion for Reconsideration with the Eighth District Appellate Court and said motion was also denied. Executive Director Ciaccia advised that the litigants anticipate Judge Pokorny to reconvene a meeting with the involved parties in order to finalize his order. Executive Director Ciaccia explained that the District's objection to the appeal was that it was premature for the reason that it was based on Judge Pokorny's order which has not been finalized. The Eighth Appellate District court agreed.

Executive Director Ciaccia noted that the District reached a settlement agreement with the Catholic Diocese of Cleveland (hereinafter "Diocese") and the Cleveland Municipal School District (hereinafter "CMSD"). Executive Director Ciaccia summarized that the essence of the agreement between the District and the Diocese is that all cemeteries will be exempt from the SMP. The settlement agreement between the District and the CMSD is that all schools having 25% of the student body qualifying for the federal school lunch program would be eligible for the homestead rate for the SMP fees.

Executive Director Ciaccia advised that the District had a good meeting with the Summit County communities on April 6, 2012. The District anticipates a proposal for settlement by Summit County. According to Executive Director Ciaccia, there is a likely chance for this matter to be negotiated.

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 3 of 12

Executive Director Ciaccia noted that there have been no settlement discussions with the eleven communities in opposition to the SMP or the business interests.

Executive Director Ciaccia moved to the next report item regarding the ongoing union negotiations. Offers were made to Local 18S and the proposal was voted down by those members. The proposals made to American Federation of State, County and Municipal Employees (hereinafter "AFSCME") reached an impasse and fact-finding is scheduled for April 27, 2012.

Executive Director Ciaccia moved to the next report item and he advised that the District is working with the City of Cleveland, Division of Water (hereinafter "CWD") in order to determine the billing fee for 2012. Executive Director Ciaccia noted that the CWD is the District's primary billing and collection agent and that the District pays the CWD an annual fee for those services. Since the CWD experienced substantial costs with respect to the implementation of the new billing system, billing negotiations for this year are more exhaustive for the reason that it is not simply an annual renewal of operation and maintenance costs. Executive Director Ciaccia explained that the new billing system implemented by the CWD is not only beneficial to the District but also the other entities utilizing the CWD as a billing agent. Executive Director Ciaccia anticipates reaching an understanding with the CWD over the next couple of weeks.

Executive Director Ciaccia moved to the final report item regarding the District's finances. The Board members were provided with the District's financial status through March 2012. District revenues are slightly ahead at 25.8%. Operating expenses are at 20.9%, which is below the 25% benchmark. Executive Director Ciaccia noted that the District is below on each line item with respect to operating expenses with the exception of capitalized payroll, which Executive Director Ciaccia explained that the District wants to be slightly ahead of 25%. Executive Director Ciaccia stated the District's finances and budget are good.

Executive Director Ciaccia concluded his report by noting that the cash collected from the CWD in 2011 was up 19.71% which was substantial given the 9% rate increase. This is also an indicator that there was catch-up from 2010. Cash is up 3.84% for the first quarter of 2012, which should be higher given the rate increase. Executive Director Ciaccia explained that some of those amounts reflected are from the last quarter of 2011.

Mr. Brown commented that the timing and implementation of the SMP and the fees established will impact the return of money back to the communities through an increased amount of stormwater projects to be completed throughout the service area. As the District nears closure the SMP litigation, Mr. Brown suggested that the District provide the Board with overview of the overall impact to the program.

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 4 of 12

Executive Director Ciaccia turned discussion over to Director of Watershed Programs, Frank Greenland.

Mr. Greenland advised that the District is in the process of updating its stormwater financial plan. The District plans making necessary adjustments to the plan in order to coincide with the court's ruling as well as any settlement agreements. The District plans bringing the finalized stormwater financial plan to the Board in order to address the SMP revenues, return back to the communities and the impacts made to the District's operation and maintenance and Capital Improvement Program (hereinafter "CIP").

Mr. Brown commented that his concern was whether the steps taken to rectify sediment and erosion problems throughout the service area will cease due to the ongoing SMP litigation. Mr. Brown explained that the costs associated with those types of projects could potentially increase over time. Mr. Brown suggested using the "right tool to measure" what is required, funding levels and timeline.

Executive Director Ciaccia commented that the points raised were good and that he wanted to expand on those issues. Executive Director Ciaccia indicated that he engaged in recent discussions regarding the fact that the District has had the authority and has been managing stormwater for quite some time. The authority for the District to carry out stormwater projects has been confirmed; however, the District does not have a dedicated funding source. The District does have the authority to use funding for stormwater projects and will judiciously exercise said authority. The majority of District funding is dedicated for operation and maintenance costs and consent order projects at this time.

The District will be required to make decisions to move forward in light of the appeals. Staff is currently operating on the premise that a dedicated funding source for the SMP will begin January 1, 2013, unless, a Motion for Stay Pending Appeal is granted by the Eighth District Appellate Court. Executive Director Ciaccia noted that regardless of the outcome, the funding will not be immediately available to carry out projects beginning January 1, 2013. Those stormwater projects will have to gradually be phased in. Executive Director Ciaccia indicated that this is substantive discussion that will take place with the Board over the next few months.

V. Action Items

Authorization to Advertise

Resolution No. 91-12

Environmental and Maintenance Services
Center Laboratory Improvements Project.
Engineer's estimate of probable
construction cost: \$6,484,000.00.

MOTION – Mr. O'Malley moved and Mayor DeGeeter seconded to adopt Resolution No. 91-12. Without objection, the motion carried unanimously.

Subsequent to the adoption of the motion to approve Resolution No. 91-12, Mr. Brown questioned when the Environmental and Maintenance Services Center Laboratory was last updated.

Director of Engineering and Construction, Kellie Rotunno, replied that the EMSC laboratory has been operating but has not been upgraded.

Mr. Brown questioned if the EMSC laboratory has been operating as originally constructed wherein Ms. Rotunno affirmed.

Ms. Rotunno stated that the EMSC laboratory improvements will include upgrades to the facility and HVAC system, compliance with new safety requirements for chemical storage, and making it a safer work environment for District employees.

Authorization to Enter Into Contract

Resolution No. 92-12

Two (2) year requirement contract with
Ohio Bulk Transfer Company for grit and
screenings disposal for all Wastewater
Treatment Plants. Cost: \$724,259.20.

MOTION – Ms. Kelly moved and Mr. Sulik seconded to adopt Resolution No. 92-12. A roll call vote was taken which carried with one abstention by Mayor Bacci.

Resolution No. 93-12

One (1) year requirement contract with
Reserve Solutions, Inc. to provide ferric
chloride solution for all Wastewater
Treatment Plants. Cost: \$218,540.00.

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 6 of 12

MOTION – Mr. Sulik moved and Mayor Bacci seconded to adopt Resolution No. 93-12. Without objection, the motion carried unanimously.

Subsequent to the adoption of the motion to approve Resolution No. 93-12, Mr. Brown commented that the District has been tracking subcontracting opportunities as well as subcontracting results at project close out. With respect to Resolution Nos. 92-12 and 93-12, it was noted that subcontracting opportunities were available; however, those companies were non-responsive to the bid. Consequently, the projects are being awarded to companies that did not propose subcontracting opportunities.

Executive Director Ciaccia clarified that those contractors were identified as “prime” contractors since there were no subcontracting opportunities.

Mr. Brown followed up by stating that those contractors failed to issue a proposal as a prime contractor wherein Executive Director Ciaccia affirmed.

Ms. Kelly indicated that her concern was whether the District was keeping track of the declinations and the reasons why contractors are non-responsive to the District’s request for proposals. Ms. Kelly commented that given the current economic environment, it is unrealistic for contractors to decline contracting opportunities. Ms. Kelly wanted to ensure that “there is not something within our process that may be discouraging competition.”

Executive Director Ciaccia replied that the District lifted its performance bond requirements, which was an attempt to make it easier for contractors to bid on these types of jobs, but this has proven to be discouraging for the District. Executive Director Ciaccia advised that he was not sure whether the District has been specifically keeping track of minority contracting opportunities.

Mr. Brown commented that the District is trying to “expand the net for competition” and that after we “cast the net” we retrieved some new faces but also the “usual suspects.” Mr. Brown questioned whether the District should be engaged in some type of outreach in order to determine the reasons, barriers or hurdles for contractors.

Director of Operation and Maintenance, Dave McNeeley, advised that the District does in fact canvas non-responsive bidders to obtain reasons as to why they chose not to bid. In the even a pattern is detected, the District will modify the contracts. The District has held workshops with potential vendors in an effort to determine barriers that may be preventing them from bidding on District projects.

Ms. Kelly indicated that she would be interested in obtaining the reasons for declination wherein Mr. McNeeley advised that he would provide her with the requested information.

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 7 of 12

Mr. McNeeley inquired if Ms. Kelly would like the information specific to this contract or various contracts. Ms. Kelly advised that she would prefer being provided with the log of reasons for declination on various contracts.

Mayor Bacci requested that Mr. McNeeley's report reflect "those that you have canvassed with no response as well." Mr. McNeeley affirmed and he advised that this information is tracked as well.

Authorization to Pay Fees

Resolution No. 94-12

Pay attorney and expert fees to 3320 Woodland Avenue, Ltd. in the Matter of Probate Case No. 2011ADV0166675, Judge Laura J. Gallagher. Cost: \$43,057.73.

MOTION – Mayor Bacci moved and Mr. Sulik seconded to adopt Resolution No. 94-12. Without objection, the motion carried unanimously.

Authorization of Agreement Modification

Resolution No. 95-12

Modify agreement with the U.S. Geological Survey to increase agreement amount from \$117,595.00 to \$148,595.00.

MOTION – Mr. O'Malley moved and Mayor DeGeeter seconded to adopt Resolution No. 95-12. Without objection, the motion carried unanimously.

Authorization of Contract Modification

Resolution No. 96-12

Modify Contract No. 11000118 with J. W. Didado Electric, Inc. for the 138KV Substation for Easterly Tunnel Dewatering Pump Station at Nine Mile Creek Site Project. Cost: a time extension of 92 days with no change in the total contract price.

MOTION – Ms. Kelly moved and Mayor Bacci seconded to adopt Resolution No. 96-12. Without objection, the motion carried unanimously.

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 8 of 12

VI. Information Items

1. Program Management Status Report and Update – March 2012.

Ms. Rotunno was pleased to inform the Board that the Euclid Creek Tunnel (hereinafter “ECT”) project is underway. Ms. Rotunno advised that the Director of the Ohio Environmental Protection Agency (hereinafter “OEPA”), Scott Nally, and members of his staff visited Northeast Ohio last week. Executive Director Ciaccia and Ms. Rotunno brought them to the ECT site. The group entered Shaft 1 and descended 200 feet below ground on a crane elevator. Ms. Rotunno advised that at the bottom of the shaft concrete was poured and rails have been installed. Pipe segments for the tunnels are being staged. Ms. Rotunno commented that it is quite impressive.

The contractors are making preparation to receive parts of the tunnel boring machine. The cutter head arrived at the ECT site in five pieces and remains onsite for assembly. The main drive unit is in route to the ECT site and weighs over 330,000 pounds and requires to be transported on a 19-axel truck.

Ms. Rotunno noted that the ECT site is well organized, clean and safe.

Ms. Rotunno stated that Director Nally seemed to be impressed with the ECT site and that this was his first visit into a CSO tunnel. Ms. Rotunno noted that the District was happy to receive Director Nally and members of his staff.

Ms. Rotunno stated that the mining at Shaft 1 has been completed and that assembly of the tunnel boring machine will commence in the tail tunnel over the next month.

Ms. Rotunno explained that the shaft excavations at the other locations are on schedule.

Ms. Rotunno indicated that the District’s public relations staff witnessed a blast at one of the shaft locations in an effort to better understand the magnitude of this type of experience. This was done in order to position the District to effectively address concerns from the public.

Ms. Rotunno stated that the excavation and shoring of the micro-tunnel shafts along Lakeshore Boulevard are underway.

Ms. Rotunno stated that the ECT project is on schedule and within budget and that the District is “off to a good start.”

The estimated date to lower the tunnel boring machine cutter head is May 16th or May 17th. The District is making preparations through the Department of Administration and

External Affairs to hold an event for the launch. More information on this event will be provided to the Board.

Ms. Rotunno moved to the next report item and stated that she visited the Renewable Energy Facility (hereinafter "REF") yesterday and today. The REF project is moving along. Many of the components are complete and the hydrostatic testing of the waste heat boilers was conducted. Ms. Rotunno advised that she attended a meeting today at the REF in order to discuss the installation of the waste heat boilers. From a technical perspective, everything seems to be coming together nicely.

Ms. Rotunno noted that the District is "weeding through the remaining general allowance" on the REF project to determine whether staff will need to come back to the Board for consideration of a contract modification for additional funding. Ms. Rotunno advised that staff anticipates the need for more funding; however, she was unsure as to the amount. Ms. Rotunno assured the Board that staff will continue to conduct its due diligence prior to bringing this contract modification request to the Board for consideration.

Ms. Rotunno moved discussion to address the Key Performance Indicators (hereinafter "KPIs") for March. The District ran behind on its goal of 95% for the procurement of projects. Ms. Rotunno noted that trend seems to be that the District has a slower start but seems to reach its year end goals "with a little push."

Ms. Rotunno moved to the KPI for the engineer's estimate of probable construction cost. The Easterly Facility Plan Improvements Code and Safety (hereinafter "EFPI-2") project, the only project bid in 2012, was 21.7% below the engineer's estimate. Conversely, the District's bid opening on April 18th for the Walworth Run Outfall Repair project resulted in the average of the bidders being 1% below the engineer's opinion of probable construction cost, which will help this KPI considerably.

Ms. Rotunno moved to the KPI for CIP project delivery being on time and on budget. Ms. Rotunno referred to a graphic and she stated that the blue line represented up to \$236.4 million, which was the amount, set at the beginning of 2012 and has not been adjusted. The green line is tracking along with it, which according to Ms. Rotunno, "is exactly what we want to see." This indicates that the money is being processed and that the cash flow is in accordance with the amounts slated at the onset of 2012. Ms. Rotunno stated that this is a good indicator that "our systems are starting to work together."

Ms. Rotunno moved to the KPI for construction management and project close out for less than 95% of the base contract amount. One project closed out in March; the Southerly Maintenance Building Exterior Wall Restoration (hereinafter "WPR-1")

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 10 of 12

project, which closed out within the KPI goal at 90.5%. Ms. Rotunno noted that to date District projects cumulatively closed out at 86.5% of the base contract amount.

Ms. Rotunno advised that three projects are projected to close out in April and May which includes the Dugway East Interceptor Relief Sewer (hereinafter "DEIRS") project, the Southwest/Westerly Service Agreement (hereinafter "SWDISAC") project and the Flats East Bank Development Phase III (hereinafter "FED-3") project. Those three projects are projected to close within the District's KPI goal.

Ms. Rotunno moved to the last report item regarding the District's Business Opportunity Program and participation goals. Ms. Rotunno was pleased to inform the Board that the EFPI-2 project did significantly exceed the MBE/WBE participation goals. With respect to the DEIRS, SWDISAC and FED-3 slated to close out in April/May; one of those three projects is potentially missing the KPI. Ms. Rotunno advised that there will be further discussion on that issue after project close out.

Ms. Rotunno referred to a new graphic which showed the progress of the Business Opportunity Program with respect to cash flow and invoiced amounts. The District requested for the contractors to advise as to how much has been paid to their MBE/WBE partners in addition to the future projected amounts that will be paid out and when those payments are anticipated to be made. In essence, the cash flow expected to be paid to the subcontractors is now being tracked on a time scale. Ms. Rotunno advised that she logged the data from July 2011 and that the plot or "gray curve" shows that the "actual" and the "planned" are now tracking very closely. Ms. Rotunno advised that she will continue to present this graphic to the Board going forward. This will enable the Board to see how the subcontracting opportunities are unfolding as the job is ongoing rather than being presented with the results only after the project has been completed.

Mr. Brown commented that "this makes perfect sense" and that an ongoing concern is when MBE/WBE goals are set at the project's onset and they are not reached at project close out. This tracking method will enable the District to address subcontracting concerns while the project is underway in order to ensure that the subcontracting goals are either met or that a recovery plan is in place. This methodology will also enable staff to provide the Board with a detailed explanation as to why subcontracting goals were not reached.

Ms. Rotunno stated that is the reason for tracking this information. The data can be managed on a project-by-project basis. For the purposes of the Board meeting, Ms. Rotunno compiles the data and presents it to the Board as a CIP aggregate.

Ms. Rotunno concluded her report with a quote, "The results you achieve will be in direct proportion to the effort you apply."

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 11 of 12

There were no questions for Ms. Rotunno.

Mr. Sulik commented, "Keep up the good work."

Mr. Brown stated that the information was presented clearly and concisely and that the KPIs keep the District focused on the CIP objectives. Mr. Brown thanked Ms. Rotunno and her staff and congratulated them on a "job well done."

VII. Open Session (any subject matter)

There were no items for discussion.

VIII. Public Session

Mr. Norman Edwards indicated that he was concerned about the lack of African Americans and minorities on District job sites including projects at Lee Road and Miles Avenue and Euclid Creek.

Mr. Edwards stated that he is getting two different versions and would like clarification.

Mr. Edwards advised that he travels to Washington regularly and it is of his understanding that "there are mandates for minority hiring based on demographics which these jobs are being built." There is a 16.9% MBE mandate and 6.9% WBE mandate.

Mr. Edwards indicated that he visits the jobsites in the mornings, evenings and also at noontime and that he has yet to see one African American or minority worker, laborer, truck driver, or electrician. There is zero.

Mr. Edwards wanted know whether anybody from the District is tracking certified payrolls in order to confirm whether African Americans or minorities are working at these job sites.

Mr. Edwards concluded his comments to the Board.

Executive Director Ciaccia indicated that certified payrolls identify individuals as minorities or non-minorities and whether prevailing wages, which are a requirement, are being paid. Executive Director Ciaccia stated that he was not prepared to fully answer Mr. Edwards' concerns at this time since Contract Compliance Manager, Tiffany Jordan, was not present.

BOARD OF TRUSTEES

Regular Meeting

April 19, 2012

Page 12 of 12

Based on Mr. Edwards' concerns, Mr. Brown requested for District staff to conduct its due diligence on the projects mentioned and provide the Board with an update on the tracking of those items.

Executive Director Ciaccia indicated that he did not believe the District was under the federal requirements.

Mr. Brown reiterated that staff will follow-up on those issues raised by Mr. Edwards. Executive Director Ciaccia affirmed.

Ms. Kelly respectfully requested that, if possible, individuals wishing to address their concerns to the Board provide those in advance so that the District has a prepared response and that the appropriate individuals will be available at the meeting to address those concerns.

IX. Executive Session

Mr. Brown stated that there were no items for discussion in Executive Session.

X. Adjournment

MOTION – Mr. Brown stated business having been concluded, he would entertain a motion to adjourn. Mr. O'Malley moved and Ms. Kelly seconded the motion to adjourn at 1:05 p.m. Without objection, the motion carried unanimously.



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



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